

1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101-508, set out as an Effective Date note under section 1320a-3a of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VI, §6411(d)(4)[(A)], Dec. 19, 1989, 103 Stat. 2271, provided that: "The amendments made by paragraphs (1) and (2) [amending this section and sections 1395y and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989]."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360 set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-93, §15, Aug. 18, 1987, 101 Stat. 698, provided that:

"(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act [enacting sections 1395aaa and 1396r-2 of this title, amending this section, sections 704, 1320a-3, 1320a-5, 1320a-7a, 1320a-7b, 1320c-5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title, and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a-7b of this title, repealing section 1395nn of this title, enacting provisions set out as a note under section 1320a-7b of this title, and amending provisions set out as a note under section 1396a of this title] shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act [Aug. 18, 1987] and shall not apply to administrative proceedings commenced before the end of such period.

"(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act [42 U.S.C. 1320a-7(c)(3)(B)] (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

"(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) [enacting section 1396r-2 of this title and amending sections 1396a and 1396s of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendment have been published by such date.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

"(3) Subsection (j) of section 1128A of the Social Security Act [42 U.S.C. 1320a-7a(j)] (as added by section 3(f)

of this Act) takes effect on the date of the enactment of this Act.

"(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [42 U.S.C. 1320a-7a(a)(1)(C)(ii), (iii)], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

"(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act [amending provisions set out as a note under section 1396a of this title] shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

"(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act [42 U.S.C. 1320a-7(b)(8)(B)(iii)] (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [42 U.S.C. 1395 et seq.] if payment to the person has been denied under section 1862(d) of the Social Security Act [42 U.S.C. 1395(d)], as in effect before the effective date specified in subsection (a)."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-509, title IX, §9317(d)(3), Oct. 21, 1986, 100 Stat. 2009, provided that: "The provisions—

"(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [42 U.S.C. 1320a-7(f)(1)-(3)] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

"(B) of paragraph (4) of such section [42 U.S.C. 1320a-7(f)(4)] shall apply to participation in a program entered into on or after the date of the enactment of this Act."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. B, title III, §2333(c), July 18, 1984, 98 Stat. 1089, provided that: "The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date."

#### EFFECTIVE DATE OF 1981 AMENDMENT

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

### § 1320a-7a. Civil monetary penalties

#### (a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5)) that—

(1) knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1)), a claim (as defined in subsection (i)(2)) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician's service (or an item or service incident to a physician's service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

- (i) was not licensed as a physician,
- (ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or
- (iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified,

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the Federal health care program (as defined in section 1320a-7b(f) of this title) under which the claim was made pursuant to Federal law.<sup>1</sup>

(E) is for a pattern of medical or other items or services that a person knows or should know are not medically necessary;

(2) knowingly presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX) not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title, or (D) an agreement pursuant to section 1395cc(a)(1)(G) of this title;

(3) knowingly gives or causes to be given to any person, with respect to coverage under subchapter XVIII of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under subchapter XVIII or a State health care program in accordance with this subsection or under section 1320a-7 of this title and who, at the time of a violation of this subsection—

(A) retains a direct or indirect ownership or control interest in an entity that is participating in a program under subchapter XVIII or a State health care program, and who knows or should know of the action constituting the basis for the exclusion; or

(B) is an officer or managing employee (as defined in section 1320a-5(b) of this title) of such an entity;

(5) offers to or transfers remuneration to any individual eligible for benefits under sub-

chapter XVIII of this chapter, or under a State health care program (as defined in section 1320a-7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII, or a State health care program (as so defined);

(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a-7b(f) of this title), for the provision of items or services for which payment may be made under such a program;

(7) commits an act described in paragraph (1) or (2) of section 1320a-7b(b) of this title;

(8)<sup>2</sup> knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or<sup>3</sup>

(9)<sup>4</sup> fails to grant timely access, upon reasonable request (as defined by the Secretary in regulations), to the Inspector General of the Department of Health and Human Services, for the purpose of audits, investigations, evaluations, or other statutory functions of the Inspector General of the Department of Health and Human Services;

(8)<sup>2</sup> orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim for such medical or other item or service will be made under such a program;

(9)<sup>4</sup> knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program (as so defined), including Medicare Advantage organizations under part C of subchapter XVIII, prescription drug plan sponsors under part D of subchapter XVIII, medicaid managed care organizations under subchapter XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans;<sup>5</sup>

(10) knows of an overpayment (as defined in paragraph (4) of section 1320a-7k(d) of this title) and does not report and return the overpayment in accordance with such section;

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$10,000 for each item or service (or, in cases under paragraph (3), \$15,000 for each individual with respect to whom false or misleading information was given; in cases under paragraph (4), \$10,000 for each day the prohibited relationship occurs; in cases under paragraph (7), \$50,000 for each such act,<sup>6</sup> in

<sup>2</sup> So in original. Two pars. (8) have been enacted.

<sup>3</sup> So in original. The word "or" probably should not appear.

<sup>4</sup> So in original. Two pars. (9) have been enacted.

<sup>5</sup> So in original. Probably should be followed by "or".

<sup>6</sup> So in original. The comma probably should be a semicolon.

<sup>1</sup> So in original. Probably should be "law, or".

cases under paragraph (8),<sup>7</sup> \$50,000 for each false record or statement,<sup>6</sup> or<sup>8</sup> in cases under paragraph (9),<sup>9</sup> \$15,000 for each day of the failure described in such paragraph;<sup>10</sup> or in cases under paragraph (9),<sup>11</sup> \$50,000 for each false statement or misrepresentation of a material fact). In addition, such a person shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim (or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact). In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a-7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person from participation in any State health care program.

**(b) Payments to induce reduction or limitation of services**

(1) If a hospital or a critical access hospital knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit medically necessary services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVIII or to medical assistance under a State plan approved under subchapter XIX, and

(B) are under the direct care of the physician,

the hospital or a critical access hospital shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than \$2,000 for each individual described in such paragraph with respect to whom the payment is made.

(3)(A) Any physician who executes a document described in subparagraph (B) with respect to an individual knowing that all of the requirements referred to in such subparagraph are not met with respect to the individual shall be subject to a civil monetary penalty of not more than the greater of—

(i) \$5,000, or

(ii) three times the amount of the payments under subchapter XVIII for home health services which are made pursuant to such certification.

(B) A document described in this subparagraph is any document that certifies, for purposes of subchapter XVIII, that an individual meets the requirements of section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title in the case of home health services furnished to the individual.

**(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure**

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty, assessment, or exclusion under subsection (a) or (b) only as authorized by the Attorney General pursuant to procedures agreed upon by them. The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

<sup>7</sup> So in original. Probably is a reference to the first paragraph (8).

<sup>8</sup> So in original. The word "or" probably should not appear.

<sup>9</sup> So in original. Probably is a reference to the first paragraph (9).

<sup>10</sup> So in original. Probably should be "paragraph:".

<sup>11</sup> So in original. Probably is a reference to the second paragraph (9).

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

**(d) Amount or scope of penalty, assessment, or exclusion**

In determining the amount or scope of any penalty, assessment, or exclusion imposed pursuant to subsection (a) or (b), the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

**(e) Review by courts of appeals**

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim or specified claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court<sup>12</sup> the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original

order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

**(f) Compromise of penalties and assessments; recovery; use of funds recovered**

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim or specified claim (as defined in subsection (r)) was presented, or where the claimant (or, with respect to a person described in subsection (o), the person) resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under subchapter XIX, there shall be paid to the State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395i and 1395t of this title shall be repaid to such trust funds.

(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1320a-7b(f) of this title), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Insurance Portability and Accountability Act of 1996 (as estimated by the Secretary) shall be deposited into the Federal Hospital Insurance Trust Fund pursuant to section 1395i(k)(2)(C) of this title.

(4) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency (or, in the case of a penalty or assessment under subsection (o), by a specified State agency (as defined in subsection (q)(6)), to the person against whom the penalty or assessment has been assessed.

**(g) Finality of determination respecting penalty, assessment, or exclusion**

A determination by the Secretary to impose a penalty, assessment, or exclusion under subsection (a) or (b) shall be final upon the expiration of the sixty-day period referred to in sub-

<sup>12</sup>So in original. Probably should not be capitalized.

section (e). Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) may not be raised as a defense to a civil action by the United States to collect a penalty, assessment, or exclusion assessed under this section.

**(h) Notification of appropriate entities of finality of determination**

Whenever the Secretary's determination to impose a penalty, assessment, or exclusion under subsection (a) or (b) becomes final, he shall notify the appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a-7(h) of this title), and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty, assessment, or exclusion has become final and the reasons therefor.

**(i) Definitions**

For the purposes of this section:

(1) The term "State agency" means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State's program under subchapter V or division A<sup>13</sup> of subchapter XX of this chapter.

(2) The term "claim" means an application for payments for items and services under a Federal health care program (as defined in section 1320a-7b(f) of this title).

(3) The term "item or service" includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term "agency of the United States" includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a Federal health care program (as so defined).

(5) The term "beneficiary" means an individual who is eligible to receive items or services for which payment may be made under a Federal health care program (as so defined) but does not include a provider, supplier, or practitioner.

(6) The term "remuneration" includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term "remuneration" does not include—

(A) the waiver of coinsurance and deductible amounts by a person, if—

(i) the waiver is not offered as part of any advertisement or solicitation;

(ii) the person does not routinely waive coinsurance or deductible amounts; and

(iii) the person—

(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need; or

(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts;

(B) subject to subsection (n), any permissible practice described in any subparagraph of section 1320a-7b(b)(3) of this title or in regulations issued by the Secretary;

(C) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after August 21, 1996;

(D) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated;

(E) a reduction in the copayment amount for covered OPD services under section 1395l(t)(5)(B)<sup>13</sup> of this title; or<sup>8</sup>

(F) any other remuneration which promotes access to care and poses a low risk of harm to patients and Federal health care programs (as defined in section 1320a-7b(f) of this title and designated by the Secretary under regulations);

(G) the offer or transfer of items or services for free or less than fair market value by a person, if—

(i) the items or services consist of coupons, rebates, or other rewards from a retailer;

(ii) the items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

(iii) the offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under subchapter XVIII or a State health care program (as defined in section 1320a-7(h) of this title);

(H) the offer or transfer of items or services for free or less than fair market value by a person, if—

(i) the items or services are not offered as part of any advertisement or solicitation;

(ii) the items or services are not tied to the provision of other services reimbursed in whole or in part by the program under subchapter XVIII or a State health care program (as so defined);

(iii) there is a reasonable connection between the items or services and the medical care of the individual; and

(iv) the person provides the items or services after determining in good faith that the individual is in financial need; or

(I) effective on a date specified by the Secretary (but not earlier than January 1, 2011),

<sup>13</sup> See References in Text note below.

the waiver by a PDP sponsor of a prescription drug plan under part D of subchapter XVIII or an MA organization offering an MA-PD plan under part C of such subchapter of any copayment for the first fill of a covered part D drug (as defined in section 1395w-102(e) of this title) that is a generic drug for individuals enrolled in the prescription drug plan or MA-PD plan, respectively.

(7) The term “should know” means that a person, with respect to information—

(A) acts in deliberate ignorance of the truth or falsity of the information; or

(B) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

**(j) Subpoenas**

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(2) The Secretary may delegate authority granted under this section and under section 1320a-7 of this title to the Inspector General of the Department of Health and Human Services.

**(k) Injunctions**

Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

**(l) Liability of principal for acts of agent**

A principal is liable for penalties, assessments, and an exclusion under this section for the actions of the principal's agent acting within the scope of the agency.

**(m) Claims within jurisdiction of other departments or agencies**

(1) For purposes of this section, with respect to a Federal health care program not contained in this chapter, references to the Secretary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of

other Federal departments or agencies as long as the following conditions are satisfied:

(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the department or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 (5 U.S.C. App.) with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.

**(n) Safe harbor for payment of medigap premiums**

(1) Subparagraph (B) of subsection (i)(6) shall not apply to a practice described in paragraph (2) unless—

(A) the Secretary, through the Inspector General of the Department of Health and Human Services, promulgates a rule authorizing such a practice as an exception to remuneration; and

(B) the remuneration is offered or transferred by a person under such rule during the 2-year period beginning on the date the rule is first promulgated.

(2) A practice described in this paragraph is a practice under which a health care provider or facility pays, in whole or in part, premiums for medicare supplemental policies for individuals entitled to benefits under part A of subchapter XVIII pursuant to section 426-1 of this title.

**(o) Penalties for violations of grants, contracts, and other agreements**

Any person (including an organization, agency, or other entity, but excluding a program beneficiary, as defined in subsection (q)(4) that, with respect to a grant, contract, or other agreement for which the Secretary provides funding—

(1) knowingly presents or causes to be presented a specified claim (as defined in subsection (r)) under such grant, contract, or other agreement that the person knows or should know is false or fraudulent;

(2) knowingly makes, uses, or causes to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document that is required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part by such Secretary pursuant to such grant, contract, or other agreement;

(3) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent specified claim under such grant, contract, or other agreement;

(4) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation (as defined in subsection (s)) to pay or transmit funds or property to such Secretary with respect to such grant, contract, or other agreement, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit funds or property to such Secretary with respect to such grant, contract, or other agreement; or

(5) fails to grant timely access, upon reasonable request (as defined by such Secretary in regulations), to the Inspector General of the Department, for the purpose of audits, investigations, evaluations, or other statutory functions of such Inspector General in matters involving such grants, contracts, or other agreements;

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty in cases under paragraph (1), of not more than \$10,000 for each specified claim; in cases under paragraph (2), not more than \$50,000 for each false statement, omission, or misrepresentation of a material fact; in cases under paragraph (3), not more than \$50,000 for each false record or statement; in cases under paragraph (4), not more than \$50,000 for each false record or statement or \$10,000 for each day that the person knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay; or in cases under paragraph (5), not more than \$15,000 for each day of the failure described in such paragraph. In addition, in cases under paragraphs (1) and (3), such a person shall be subject to an assessment of not more than 3 times the amount claimed in the specified claim described in such paragraph in lieu of damages sustained by the United States or a specified State agency because of such specified claim, and in cases under paragraphs (2) and (4), such a person shall be subject to an assessment of not more than 3 times the total amount of the funds described in paragraph (2) or (4), respectively (or, in the case of an obligation to transmit property to the Secretary described in paragraph (4), of the value of the property described in such paragraph) in lieu of damages sustained by the United States or a specified State agency because of such case. In addition, the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a-7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person from participation in any State health care program.

**(p) Applicability of rules to penalties or assessments for violations of grants, contracts, and other agreements**

The provisions of subsections (c), (d), (g), and (h) shall apply to a civil money penalty or assessment under subsection (o) in the same manner as such provisions apply to a penalty, assessment, or proceeding under subsection (a). In applying subsection (d), each reference to a claim under such subsection shall be treated as including a reference to a specified claim (as defined in subsection (r)).

**(q) Definitions of terms used in subsections (o) and (p)**

For purposes of this subsection and subsections (o) and (p):

(1) The term “Department” means the Department of Health and Human Services.

(2) The term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(3) The term “other agreement” includes a cooperative agreement, scholarship, fellowship, loan, subsidy, payment for a specified use, donation agreement, award, or subaward (regardless of whether one or more of the persons entering into the agreement is a contractor or subcontractor).

(4) The term “program beneficiary” means, in the case of a grant, contract, or other agreement designed to accomplish the objective of awarding or otherwise furnishing benefits or assistance to individuals and for which the Secretary provides funding, an individual who applies for, or who receives, such benefits or assistance from such grant, contract, or other agreement. Such term does not include, with respect to such grant, contract, or other agreement, an officer, employee, or agent of a person or entity that receives such grant or that enters into such contract or other agreement.

(5) The term “recipient” includes a subrecipient or subcontractor.

(6) The term “specified State agency” means an agency of a State government established or designated to administer or supervise the administration of a grant, contract, or other agreement funded in whole or in part by the Secretary.

**(r) Definition of “specified claim”**

For purposes of this section, the term “specified claim” means any application, request, or demand under a grant, contract, or other agreement for money or property, whether or not the United States or a specified State agency has title to the money or property, that is not a claim (as defined in subsection (i)(2)) and that—

(1) is presented or caused to be presented to an officer, employee, or agent of the Department or agency thereof, or of any specified State agency; or

(2) is made to a contractor, grantee, or any other recipient if the money or property is to be spent or used on the Department’s behalf or to advance a Department program or interest, and if the Department—

(A) provides or has provided any portion of the money or property requested or demanded; or

(B) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

**(s) Definition of “obligation”**

For purposes of subsection (o), the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, for a fee-based or similar re-

lationship, from statute or regulation, or from the retention of any overpayment.

(Aug. 14, 1935, ch. 531, title XI, § 1128A, as added Pub. L. 97-35, title XXI, § 2105(a), Aug. 13, 1981, 95 Stat. 789; amended Pub. L. 97-248, title I, § 137(b)(26), Sept. 3, 1982, 96 Stat. 380; Pub. L. 98-369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), July 18, 1984, 98 Stat. 1073, 1100; Pub. L. 99-509, title IX, §§ 9313(c)(1), 9317(a), (b), Oct. 21, 1986, 100 Stat. 2003, 2008; Pub. L. 100-93, § 3, Aug. 18, 1987, 101 Stat. 686; Pub. L. 100-203, title IV, §§ 4039(h)(1), 4118(e)(1), (6)-(10), Dec. 22, 1987, 101 Stat. 1330-155, as amended Pub. L. 100-360, title IV, § 411(e)(3), (k)(10)(B)(ii), (D), July 1, 1988, 102 Stat. 775, 794, 795; Pub. L. 100-360, title II, § 202(c)(2), July 1, 1988, 102 Stat. 715; Pub. L. 100-485, title VI, § 608(d)(26)(H)-(K)(i), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101-234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101-239, title VI, § 6003(g)(3)(D)(i), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101-508, title IV, §§ 4204(a)(3), 4207(h), formerly 4027(h), 4731(b)(1), 4753, Nov. 5, 1990, 104 Stat. 1388-109, 1388-123, 1388-195, 1388-208, renumbered § 4207(h), Pub. L. 103-432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104-191, title II, §§ 231(a)-(e), (h), 232(a), Aug. 21, 1996, 110 Stat. 2012-2015; Pub. L. 105-33, title IV, §§ 4201(c)(1), 4304(a), (b), 4331(e), 4523(c), Aug. 5, 1997, 111 Stat. 373, 383, 396, 449; Pub. L. 105-277, div. J, title V, § 5201(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681-916; Pub. L. 111-148, title VI, §§ 6402(d)(2), 6408(a), 6703(d)(3)(B), Mar. 23, 2010, 124 Stat. 757, 770, 804; Pub. L. 114-10, title V, § 512(a)(1), Apr. 16, 2015, 129 Stat. 170; Pub. L. 114-255, div. A, title V, § 5003, Dec. 13, 2016, 130 Stat. 1188.)

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (f)(3), is Pub. L. 104-191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

Division A of subchapter XX, referred to in subsec. (i)(1), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

Section 1395(t)(5)(B) of this title, referred to in subsec. (i)(6)(E), was redesignated section 1395(t)(8)(B) of this title by Pub. L. 106-113, div. B, § 1000(a)(6) [title II, §§ 201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-336, 1501A-342.

The Inspector General Act of 1978, referred to in subsec. (m)(2)(B), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### AMENDMENTS

2016—Subsec. (e). Pub. L. 114-255, § 5003(b)(1), inserted “or specified claim” after “claim”.

Subsec. (f). Pub. L. 114-255, § 5003(b)(2), inserted “or specified claim (as defined in subsection (r))” after “district where the claim” and “(or, with respect to a person described in subsection (o), the person)” after “claimant” in introductory provisions and “(or, in the case of a penalty or assessment under subsection (o), by a specified State agency (as defined in subsection

(q)(6)),” after “or a State agency” in concluding provisions.

Subsecs. (o) to (s). Pub. L. 114-255, § 5003(a), added subsecs. (o) to (s).

2015—Subsec. (b)(1). Pub. L. 114-10 inserted “medically necessary” after “reduce or limit”.

2010—Subsec. (a). Pub. L. 111-148, § 6408(a)(3)(B), which directed substitution of “act, in cases under paragraph (8), \$50,000 for each false record or statement, or in cases under paragraph (9), \$15,000 for each day of the failure described in such paragraph)” for “act” in first sentence, was executed by making the substitution for “act” to reflect the probable intent of Congress. See amendment by Pub. L. 111-148, § 6402(d)(2)(A)(iv) below.

Pub. L. 111-148, § 6408(a)(3)(A), which directed substitution of “in cases under paragraph (7)” for “or in cases under paragraph (7)” in first sentence, was executed by making the substitution for “in cases under paragraph (7)” resulting in no change in text and to reflect the probable intent of Congress. See amendment by Pub. L. 111-148, § 6402(d)(2)(A)(iv) below.

Pub. L. 111-148, § 6402(d)(2)(A)(iv), (v), in concluding provisions, struck out “or” after “prohibited relationship occurs;” and substituted “act; or in cases under paragraph (9), \$50,000 for each false statement or misrepresentation of a material fact)” for “act)” and “purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact)” for “purpose”.

Subsec. (a)(1)(D). Pub. L. 111-148, § 6402(d)(2)(A)(i), which directed substitution of “was excluded from the Federal health care program (as defined in section 1320a-7b(f) of this title) under which the claim was made pursuant to Federal law.” for “‘was excluded’ and all that follows through the period at the end”, was executed by making the substitution for “was excluded from the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1320a-7, 1320c-5, 1320c-9(b) (as in effect on September 2, 1982), 1395y(d) (as in effect on August 18, 1987), or 1395cc(b) of this title or as a result of the application of the provisions of section 1395u(j)(2) of this title, or”, to reflect the probable intent of Congress, because there was no period at the end.

Subsec. (a)(6). Pub. L. 111-148, §§ 6402(d)(2)(A)(ii), 6408(a)(1), amended par. (6) identically, striking out “or” at the end.

Subsec. (a)(8), (9). Pub. L. 111-148, § 6408(a)(2), added pars. (8) and (9) relating to false or fraudulent claims for payment for items and services furnished under a Federal health care program and failure to grant timely access to the Inspector General of the Department of Health and Human Services, respectively.

Pub. L. 111-148, § 6402(d)(2)(A)(iii), added pars. (8) and (9) relating to orders or prescriptions for persons excluded from a Federal health care program; and false statements, omissions, or misrepresentations in applications, bids, or contracts to participate or enroll as a provider of services or a supplier under a Federal health care program, respectively.

Subsec. (a)(10). Pub. L. 111-148, § 6402(d)(2)(A)(iii), added par. (10).

Subsec. (i)(1). Pub. L. 111-148, § 6703(d)(3)(B), inserted “division A of” after “subchapter V or”.

Subsec. (i)(6)(C). Pub. L. 111-148, § 6402(d)(2)(B)(i), struck out “or” at the end.

Subsec. (i)(6)(D). Pub. L. 111-148, § 6402(d)(2)(B)(ii), in subpar. (D) relating to incentives given to individuals to promote delivery, substituted a semicolon for the period.

Subsec. (i)(6)(E). Pub. L. 111-148, § 6402(d)(2)(B)(iii), redesignated subpar. (D) relating to a reduction in copayment amount for covered OPD services as (E) and substituted “; or” for the period.

Subsec. (i)(6)(F) to (I). Pub. L. 111-148, § 6402(d)(2)(B)(iv), added pars. (F) to (I).

1998—Subsec. (i)(6)(B). Pub. L. 105-277, § 5201(a), amended subpar. (B) generally. Prior to amendment,

subpar. (B) read as follows: “any permissible waiver as specified in section 1320a-7b(b)(3) of this title or in regulations issued by the Secretary;”.

Subsec. (n). Pub. L. 105-277, §5201(b)(1), added subsec. (n).

1997—Subsec. (a). Pub. L. 105-33, §4304(b)(2), in concluding provisions, substituted “occurs; or in cases under paragraph (7), \$50,000 for each such act.” for “occurs.” and inserted “(or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose)” after “of such claim”.

Subsec. (a)(6). Pub. L. 105-33, §4304(a), added par. (6).

Subsec. (a)(7). Pub. L. 105-33, §4304(b)(1), added par. (7).

Subsec. (b)(1). Pub. L. 105-33, §4201(c)(1), substituted “critical access” for “rural primary care” in introductory and concluding provisions.

Subsec. (i)(6)(A)(iii). Pub. L. 105-33, §4331(e)(1), inserted “or” at end of subcl. (I), struck out “or” at end of subcl. (II), and struck out subcl. (III) which read as follows: “provides for any permissible waiver as specified in section 1320a-7b(b)(3) of this title or in regulations issued by the Secretary;”.

Subsec. (i)(6)(B). Pub. L. 105-33, §4523(c)(1), which directed amendment of par. (6) by striking “or” at end of subpar. (B), could not be executed because the word “or” did not appear at end of subpar. (B) subsequent to amendment by Pub. L. 105-33, §4331(e)(2), (3). See below.

Pub. L. 105-33, §4331(e)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (i)(6)(C). Pub. L. 105-33, §4523(c)(2), which directed amendment of par. (6) by substituting “; or” for the period at end of subpar. (C), could not be executed because there was not a period at the end of subpar. (C) subsequent to amendment by Pub. L. 105-33, §4331(e)(2). See below.

Pub. L. 105-33, §4331(e)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (i)(6)(D). Pub. L. 105-33, §4523(c), added subpar. (D) relating to a reduction in copayment amount for covered OPD services.

Pub. L. 105-33, §4331(e)(2), redesignated subpar. (C), relating to incentives given to individuals to promote delivery, as (D).

1996—Subsec. (a). Pub. L. 104-191, §231(c), in concluding provisions, substituted “\$10,000” for “\$2,000”, inserted “; in cases under paragraph (4), \$10,000 for each day the prohibited relationship occurs” after “false or misleading information was given”, and substituted “3 times the amount” for “twice the amount”.

Pub. L. 104-191, §231(a)(1), in concluding provisions, substituted “Federal health care programs (as defined in section 1320a-7b(f)(1) of this title)” for “programs under subchapter XVIII of this chapter”.

Subsec. (a)(1). Pub. L. 104-191, §231(d)(1)(A), inserted “knowingly” before “presents” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 104-191, §231(e)(1), substituted “claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,” for “claimed,”.

Subsec. (a)(1)(E). Pub. L. 104-191, §231(e)(2)-(4), added subpar. (E).

Subsec. (a)(2). Pub. L. 104-191, §231(d)(1)(A), inserted “knowingly” before “presents”.

Subsec. (a)(3). Pub. L. 104-191, §231(d)(1)(B), substituted “knowingly gives or causes to be given” for “gives”.

Subsec. (a)(4). Pub. L. 104-191, §231(b), added par. (4).

Subsec. (a)(5). Pub. L. 104-191, §231(h)(1), added par. (5).

Subsec. (b)(3). Pub. L. 104-191, §232(a), added par. (3).

Subsec. (f)(3), (4). Pub. L. 104-191, §231(a)(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(2). Pub. L. 104-191, §231(a)(3)(A), substituted “a Federal health care program (as defined in section 1320a-7b(f) of this title)” for “subchapter V, XVIII, XIX, or XX of this chapter”.

Subsec. (i)(4). Pub. L. 104-191, §231(a)(3)(B), substituted “a Federal health care program (as so defined)” for “a health insurance or medical services program under subchapter XVIII or XIX of this chapter”.

Subsec. (i)(5). Pub. L. 104-191, §231(a)(3)(C), substituted “a Federal health care program (as so defined)” for “subchapter V, XVIII, XIX, or XX of this chapter”.

Subsec. (i)(6). Pub. L. 104-191, §231(h)(2), added par. (6).

Subsec. (i)(7). Pub. L. 104-191, §231(d)(2), added par. (7).

Subsec. (m). Pub. L. 104-191, §231(a)(4), added subsec. (m).

1990—Subsec. (b)(1). Pub. L. 101-508, §4731(b)(1), struck out “or an entity with a contract under section 1396b(m) of this title” before “knowingly makes a payment” in introductory provisions.

Pub. L. 101-508, §4204(a)(3), struck out “, an eligible organization with a risk-sharing contract under section 1395mm of this title,” after “primary care hospital” in introductory provisions, struck out “or organization” after “primary care hospital” in concluding provisions, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “in the case of an eligible organization or an entity, are enrolled with the organization or entity, and”.

Subsec. (j). Pub. L. 101-508, §4753, made an amendment to subsec. (j) identically to that of Pub. L. 101-508, §4207(h). See below.

Pub. L. 101-508, §4207(h), formerly §4027(h), as renumbered by Pub. L. 103-432, designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (a)(1)(D), (2)(C), (4). Pub. L. 101-234 repealed Pub. L. 100-360, §202(c), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(1). Pub. L. 101-239 substituted “hospital or a rural primary care hospital” for “hospital” in introductory and concluding provisions.

1988—Subsec. (a). Pub. L. 100-360, §411(k)(10)(D), added Pub. L. 100-203, §4118(e)(10)(A), see 1987 Amendment note below.

Subsec. (a)(1). Pub. L. 100-360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100-485, §608(d)(26)(H), amended directory language of Pub. L. 100-203, §4118(e)(1), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100-360, §411(k)(10)(D), as amended by Pub. L. 100-485, §608(d)(26)(K)(i), added Pub. L. 100-203, §4118(e)(6), see 1987 Amendment note below.

Pub. L. 100-360, §202(c)(2)(A), struck out “or” after semicolon.

Subsec. (a)(2)(C). Pub. L. 100-360, §202(c)(2)(B), inserted “or to be a participating pharmacy under section 1395u(o) of this title” after “section 1395u(h)(1) of this title”.

Subsec. (a)(3). Pub. L. 100-360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100-485, §608(d)(26)(H), made technical amendment to directory language of Pub. L. 100-203, §4118(e)(1)(A), see 1987 Amendment note below.

Subsec. (a)(4). Pub. L. 100-360, §202(c)(2)(C)-(E), added par. (4) relating to participating or nonparticipating pharmacies.

Subsec. (b)(1)(A). Pub. L. 100-360, §411(e)(3), added Pub. L. 100-203, §4039(h)(1)(A), see 1987 Amendment note below.

Subsec. (b)(2). Pub. L. 100-360, §411(e)(3), added Pub. L. 100-203, §4039(h)(1)(B), see 1987 Amendment note below.

Subsec. (c)(1). Pub. L. 100-360, §411(k)(10)(D), added Pub. L. 100-203, §4118(e)(7), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100-360, §411(k)(10)(D), added Pub. L. 100-203, §4118(e)(8), see 1987 Amendment note below.

Subsec. (i)(1). Pub. L. 100-360, §411(k)(10)(D), added Pub. L. 100-203, §4118(e)(9), see 1987 Amendment note below.

Subsec. (i)(2). Pub. L. 100-360, §411(k)(10)(D), added Pub. L. 100-203, §4118(e)(10)(B), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100-485, §608(d)(26)(J), amended directory language of Pub. L. 100-203, §4118(e)(10)(C), see 1987 Amendment note below.

Pub. L. 100-360, §411(k)(10)(D), added Pub. L. 100-203, §4118(e)(10)(C), see 1987 Amendment note below.

Subsec. (l). Pub. L. 100-485, §608(d)(26)(I), inserted “for penalties, assessments, and an exclusion” after “liable”.

Pub. L. 100-360, §411(k)(10)(B)(ii)(III), added Pub. L. 100-203, §4118(e)(1)(B), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100-203, §4118(e)(10)(A), as added by Pub. L. 100-360, §411(k)(10)(D), inserted “, but excluding a beneficiary, as defined in subsection (i)(5)” in introductory provisions.

Pub. L. 100-93, §3(a)(3)(B), in concluding provisions, inserted “(or, in cases under paragraph (3), \$15,000 for each individual with respect to whom false or misleading information was given)” before period at end of first sentence, and inserted at end “In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under subchapter XVIII of this chapter and to direct the appropriate State agency to exclude the person from participation in any State health care program.”

Subsec. (a)(1). Pub. L. 100-203, §4118(e)(1)(A), formerly §4118(e)(1), as amended by Pub. L. 100-360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100-485, §608(d)(26)(H), substituted “or should know” for “or has reason to know” in subpars. (A) to (C).

Pub. L. 100-93, §3(a)(1), substituted “the Secretary determines” for “the Secretary determines is for a medical or other item or service” in introductory provisions and substituted subpars. (A) to (D) for former subpars. (A) and (B) which read as follows:

“(A) that the person knows or has reason to know was not provided as claimed, or

“(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1320a-7, 1320c-9(b), or 1395y(d) of this title, or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings; or”.

Subsec. (a)(1)(D). Pub. L. 100-203, §4118(e)(6), as added by Pub. L. 100-360, §411(k)(10)(D), as amended by Pub. L. 100-485, §608(d)(26)(K)(i), substituted “excluded from” for “excluded under” and inserted “or as a result of the application of the provisions of section 1395u(j)(2) of this title”.

Subsec. (a)(2). Pub. L. 100-93, §3(a)(2), inserted “(or other requirement of a State plan under subchapter XIX)” after “State agency” in subpar. (B) and added subpar. (D).

Subsec. (a)(3). Pub. L. 100-203, §4118(e)(1)(A), as amended by Pub. L. 100-360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100-485, §608(d)(26)(H), substituted “or should know” for “or has reason to know”.

Pub. L. 100-93, §3(a)(3)(A), added par. (3).

Subsec. (b)(1)(A). Pub. L. 100-203, §4039(h)(1)(A), as added by Pub. L. 100-360, §411(e)(3), substituted “subchapter XVIII” for “subchapter XVII”.

Subsec. (b)(2). Pub. L. 100-203, §4039(h)(1)(B), as added by Pub. L. 100-360, §411(e)(3), substituted “\$2,000 for each” for “\$2,000 for”.

Subsec. (c)(1). Pub. L. 100-203, §4118(e)(7), as added by Pub. L. 100-360, §411(k)(10)(D), inserted “, request for payment, or other occurrence described in this section” and “, the request for payment was made, or the occurrence took place”.

Pub. L. 100-93, §3(b), (c), substituted “penalty, assessment, or exclusion” for “penalty or assessment” and inserted provision that the Secretary not initiate an action under this section with respect to a claim later than six years after the claim was presented and that the Secretary initiate an action in the manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Subsec. (d). Pub. L. 100-93, §3(c), substituted “penalty, assessment, or exclusion” for “penalty or assessment” in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 100-93, §3(d), substituted “bearing the same proportion to the total amount recovered as the State’s share of the amount paid by the State agency for such claim bears to the total amount paid” for “equal to the State’s share of the amount paid by the State agency”.

Subsec. (g). Pub. L. 100-93, §3(c), substituted “penalty, assessment, or exclusion” for “penalty or assessment” in two places.

Subsec. (h). Pub. L. 100-93, §3(c), (e), substituted “penalty, assessment, or exclusion” for “penalty or assessment” in two places and inserted “the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a-7(h) of this title),” after “professional organization,”.

Subsec. (i). Pub. L. 100-203, §4118(e)(8), as added by Pub. L. 100-360, §411(k)(10)(D), substituted “this section” for “this subsection” in introductory provisions.

Subsec. (i)(1). Pub. L. 100-203, §4118(e)(9), as added by Pub. L. 100-360, §411(k)(10)(D), inserted “or subchapter XX”.

Subsec. (i)(2). Pub. L. 100-203, §4118(e)(10)(B), as added by Pub. L. 100-360, §411(k)(10)(D), substituted “for payments for items and services under subchapter V, XVIII, XIX, or XX of this chapter” for “submitted by—

“(A) a provider of services or other person, agency, or organization that furnishes an item or service under subchapter XVIII of this chapter, or

“(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under subchapter XIX of this chapter, or

“(C) a person, agency, or organization that provides an item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter,

to the United States or a State agency, or agent thereof, for payment for health care services under subchapter XVIII or XIX of this chapter or for any item or service under subchapter V of this chapter”.

Subsec. (i)(5). Pub. L. 100-203, §4118(e)(10)(C), as added by Pub. L. 100-360, §411(k)(10)(D), and amended by Pub. L. 100-485, §608(d)(26)(J), added par. (5).

Subsecs. (j), (k). Pub. L. 100-93, §3(f), added subsecs. (j) and (k).

Subsec. (l). Pub. L. 100-203, §4118(e)(1)(B), as added by Pub. L. 100-360, §411(k)(10)(B)(ii)(III), added subsec. (l). 1986—Subsec. (a)(1). Pub. L. 99-509, §9313(c)(1)(B), substituted “(i)(1)” and “(i)(2)” for “(h)(1)” and “(h)(2)”, respectively.

Subsec. (b). Pub. L. 99-509, §9313(c)(1)(D), (E), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99-509, §9313(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted “subsection (a) or (b)” for “subsection (a)” in pars. (1) and (2). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 99-509, §9317(a), added par. (3).

Subsec. (c)(4). Pub. L. 99-509, §9317(b), added par. (4).

Subsec. (d). Pub. L. 99-509, §9313(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted “subsection (a) or (b)” for “subsection (a)” in introductory provisions. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 99-509, §9313(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99-509, §9313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted “subsection (a) or (b)” for “subsection (a)” and “subsection (e)” for “subsection (d)”. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99-509, §9313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted “subsection (a) or (b)” for “subsection (a)”. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99-509, §9313(c)(1)(D), redesignated subsec. (h) as (i).

1984—Subsec. (a)(2)(C). Pub. L. 98-369, §2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98-369, §2354(a)(3), substituted “utilization and quality control peer review organiza-

tion” for “Professional Standards Review Organization”.

1982—Subsec. (a). Pub. L. 97-248 redesignated as part of par. (1) preceding subpar. (A) provisions formerly preceding par. (1), in subpar. (B) substituted “or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings;” for “or 1395cc(b)(2) of this title,” and in par. (2) substituted “presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged” for “is submitted in violation of an agreement between the person and the United States or a State agency”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-10, title V, §512(a)(2), Apr. 16, 2015, 129 Stat. 170, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to payments made on or after the date of the enactment of this Act [Apr. 16, 2015].”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 6408(a) of Pub. L. 111-148 applicable to acts committed on or after Jan. 1, 2010, see section 6408(d)(1) of Pub. L. 111-148, set out as a note under section 1320a-7 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. J, title V, §5201(d), Oct. 21, 1998, 112 Stat. 2681-917, provided that: “The amendments made by this section [amending this section and section 1320a-7d of this title] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

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

Pub. L. 105-33, title IV, §4304(c), Aug. 5, 1997, 111 Stat. 384, provided that:

“(1) **CONTRACTS WITH EXCLUDED PERSONS.**—The amendments made by subsection (a) [amending this section] shall apply to arrangements and contracts entered into after the date of the enactment of this Act [Aug. 5, 1997].

“(2) **KICKBACKS.**—The amendments made by subsection (b) [amending this section] shall apply to acts committed after the date of the enactment of this Act.”

Amendment by section 4331(e) of Pub. L. 105-33 effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, see section 4331(f) of Pub. L. 105-33, set out as a note under section 1320a-7e of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-191, title II, §231(i), Aug. 21, 1996, 110 Stat. 2015, provided that: “The amendments made by this section [amending this section and sections 1320c-5 and 1395mm of this title] shall apply to acts or omissions occurring on or after January 1, 1997.”

Pub. L. 104-191, title II, §232(b), Aug. 21, 1996, 110 Stat. 2015, provided that: “The amendment made by subsection (a) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Aug. 21, 1996].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-234, title II, §201(c), Dec. 13, 1989, 103 Stat. 1981, provided that: “The provisions of this section [amending this section and sections 1320c-3, 1395h, 1395k, 1395l, 1395m, 1395n, 1395u, 1395w-2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, 1396d,

and 1396n of this title, repealing section 1395w-3 of this title, and amending or repealing provisions set out as notes under sections 1320c-3, 1395b-1, 1395k, 1395m, 1395u, 1395x, 1395l, and 1395ww of this title] shall take effect January 1, 1990.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

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

Amendment by section 202(c)(2) of Pub. L. 100-360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100-360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by section 411(e)(3), (k)(10)(B)(ii), (D) of Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IV, §4118(e)(14), formerly §4118(e)(3), Dec. 22, 1987, 101 Stat. 1330-155, as renumbered and amended by Pub. L. 100-360, title IV, §411(k)(10)(B)(i), (D), July 1, 1988, 102 Stat. 794, 795, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to activities occurring before, on, or after the date of the enactment of this Act [Dec. 22, 1987].”

Amendment by Pub. L. 100-93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, except that amendment by section 3(a)(1) of Pub. L. 100-93 applicable to claims presented for services performed on or after date at end of fourteen-day period beginning Aug. 18, 1987, without regard to the date the physician’s misrepresentation of fact was made, and amendment by section 3(f) of Pub. L. 100-93 effective Aug. 18, 1987, see section 15(a), (c)(3), and (d) of Pub. L. 100-93, set out as a note under section 1320a-7 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-509, title IX, §9313(c)(2), Oct. 21, 1986, 100 Stat. 2003, as amended by Pub. L. 100-203, title IV, §4016, Dec. 22, 1987, 101 Stat. 1330-64; Pub. L. 101-239, title VI, §6207(a), Dec. 19, 1989, 103 Stat. 2245, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to—

“(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and

“(B) payments by eligible organizations or entities occurring on or after April 1, 1991.”

Pub. L. 99-509, title IX, §9317(d)(1), (2), Oct. 21, 1986, 100 Stat. 2009, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

“(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L.

98-369, set out as a note under section 1320a-1 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, see section 137(d)(2) of Pub. L. 97-248, set out as a note under section 1396a of this title.

#### REGULATIONS

Pub. L. 105-277, div. J, title V, § 5201(e), Oct. 21, 1998, 112 Stat. 2681-917, provided that: "The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section [amending this section and section 1320a-7d of this title] in a timely manner."

#### GAO STUDY AND REPORT ON IMPACT OF SAFE HARBOR ON MEDIGAP POLICIES

Pub. L. 105-277, div. J, title V, § 5201(b)(2), Oct. 21, 1998, 112 Stat. 2681-917, which provided that, if a permissible practice was promulgated under subsec. (n)(1)(A) of this section, the Comptroller General was to conduct a study comparing any disproportionate impact on specific issuers of medicare supplemental policies due to adverse selection in enrolling medicare ESRD beneficiaries before Aug. 21, 1996, and 1 year after the date of promulgation of such permissible practice under subsec. (n)(1)(A) of this section and was to submit a report to Congress on such study with recommendations concerning extension of the time limitation under subsec. (n)(1)(B), was repealed by Pub. L. 111-8, div. G, title I, § 1301(c), Mar. 11, 2009, 123 Stat. 829.

#### REPEAL OF 1988 EXPANSION OF MEDICARE PART B BENEFITS

Pub. L. 101-234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981, provided that:

"(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA [sections 201 to 208 of Pub. L. 100-360, enacting section 1395w-3 of this title, amending this section and sections 1320c-3, 1395h, 1395k, 1395l, 1395m, 1395n, 1395u, 1395w-2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, and 1396n of this title, and enacting provisions set out as notes under sections 1320c-3, 1395b-1, 1395k, 1395m, 1395u, 1395x, 1395l, and 1395ww of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

"(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA [amending section 1395u of this title and enacting provisions set out as a note under section 1395u of this title.]"

#### STUDY AND REPORT ON INCENTIVE ARRANGEMENTS OFFERED TO PHYSICIANS

Pub. L. 99-509, title IX, § 9313(c)(3), Oct. 21, 1986, 100 Stat. 2003, directed Secretary of Health and Human Services to report to Congress, not later than Jan. 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians.

### § 1320a-7b. Criminal penalties for acts involving Federal health care programs

#### (a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f)),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

#### (b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kick-