

“(2) such recommendations as the Secretary considers appropriate regarding—

“(A) the continuation of the pilot program;

“(B) extension of the pilot program to other or all Veterans Integrated Service Networks of the Department; and

“(C) making the pilot program permanent.”

RATIFICATION OF MEDICAL SERVICES CONTRACTS

Section 1503(c) of Pub. L. 100-687 ratified actions of the Administrator in contracting with facilities other than Veterans' Administration facilities for furnishing medical services incident to treatment of certain veterans receiving hospital, nursing home, or domiciliary care, who applied for such services during the period beginning July 1, 1988, and ending Nov. 18, 1988.

PUERTO RICO CONTRACT CARE; LIMITATION ON INCURRING OF OBLIGATIONS

Pub. L. 99-166, title I, § 102(b)(2)–(5), Dec. 3, 1985, 99 Stat. 943, as amended by Pub. L. 99-272, title XIX, § 19012(c)(5)(B), Apr. 7, 1986, 100 Stat. 382, limited Administrator's authority to incur obligations for medical services for veterans residing in Puerto Rico during fiscal years 1986 to 1988.

§ 1703A. Agreements with eligible entities or providers; certification processes

(a) AGREEMENTS AUTHORIZED.—(1)(A) When hospital care, a medical service, or an extended care service required by a covered individual who is entitled to such care or service under this chapter is not feasibly available to the covered individual from a facility of the Department or through a contract or sharing agreement entered into pursuant to another provision of law, the Secretary may furnish such care or service to such covered individual through an agreement under this section with an eligible entity or provider to provide such hospital care, medical service, or extended care service.

(B) An agreement entered into under this section to provide hospital care, a medical service, or an extended care service shall be known as a “Veterans Care Agreement”.

(C) For purposes of subparagraph (A), hospital care, a medical service, or an extended care service may be considered not feasibly available to a covered individual from a facility of the Department or through a contract or sharing agreement described in such subparagraph when the Secretary determines the covered individual's medical condition, the travel involved, the nature of the care or services required, or a combination of these factors make the use of a facility of the Department or a contract or sharing agreement described in such subparagraph impracticable or inadvisable.

(D) A Veterans Care Agreement may be entered into by the Secretary or any Department official authorized by the Secretary.

(2)(A) Subject to subparagraph (B), the Secretary shall review each Veterans Care Agreement of material size, as determined by the Secretary or set forth in paragraph (3), for hospital care, a medical service, or an extended care service to determine whether it is feasible and advisable to provide such care or service within a facility of the Department or by contract or sharing agreement entered into pursuant to another provision of law and, if so, take action to do so.

(B)(i) The Secretary shall review each Veterans Care Agreement of material size that has

been in effect for at least 6 months within the first 2 years of its taking effect, and not less frequently than once every 4 years thereafter.

(ii) If a Veterans Care Agreement has not been in effect for at least 6 months by the date of the review required by subparagraph (A), the agreement shall be reviewed during the next cycle required by subparagraph (A), and such review shall serve as its review within the first 2 years of its taking effect for purposes of clause (i).

(3)(A) In fiscal year 2019 and in each fiscal year thereafter, in addition to such other Veterans Care Agreements as the Secretary may determine are of material size, a Veterans Care Agreement for the purchase of extended care services that exceeds \$5,000,000 annually shall be considered of material size.

(B) From time to time, the Secretary may publish a notice in the Federal Register to adjust the dollar amount specified in subparagraph (A) to account for changes in the cost of health care based upon recognized health care market surveys and other available data.

(b) ELIGIBLE ENTITIES AND PROVIDERS.—For purposes of this section, an eligible entity or provider is—

(1) any provider of services that has enrolled and entered into a provider agreement under section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) and any physician or other supplier who has enrolled and entered into a participation agreement under section 1842(h) of such Act (42 U.S.C. 1395u(h));

(2) any provider participating under a State plan under title XIX of such Act (42 U.S.C. 1396 et seq.);

(3) an Aging and Disability Resource Center, an area agency on aging, or a State agency (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002));

(4) a center for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)); or

(5) any entity or provider not described in paragraph (1) or (2) of this subsection that the Secretary determines to be eligible pursuant to the certification process described in subsection (c).

(c) ELIGIBLE ENTITY OR PROVIDER CERTIFICATION PROCESS.—The Secretary shall establish by regulation a process for the certification of eligible entities or providers or recertification of eligible entities or providers under this section. Such a process shall, at a minimum—

(1) establish deadlines for actions on applications for certification;

(2) set forth standards for an approval or denial of certification, duration of certification, revocation of an eligible entity or provider's certification, and recertification of eligible entities or providers;

(3) require the denial of certification if the Secretary determines the eligible entity or provider is excluded from participation in a Federal health care program under section 1128 or section 1128A of the Social Security Act (42 U.S.C. 1320a-7 or 1320a-7a) or is currently identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations;

(4) establish procedures for screening eligible entities or providers according to the risk of fraud, waste, and abuse that are similar to the standards under section 1866(j)(2)(B) of the Social Security Act (42 U.S.C. 1395cc(j)(2)(B)) and section 9.104 of title 48, Code of Federal Regulations, or successor regulations; and

(5) incorporate and apply the restrictions and penalties set forth in chapter 21 of title 41 and treat this section as a procurement program only for purposes of applying such provisions.

(d) **RATES.**—To the extent practicable, the rates paid by the Secretary for hospital care, medical services, and extended care services provided under a Veterans Care Agreement shall be in accordance with the rates paid by the United States under section 1703(i) of this title.

(e) **TERMS OF VETERANS CARE AGREEMENTS.**—

(1) Pursuant to regulations promulgated under subsection (k), the Secretary may define the requirements for providers and entities entering into agreements under this section based upon such factors as the number of patients receiving care or services, the number of employees employed by the entity or provider furnishing such care or services, the amount paid by the Secretary to the provider or entity, or other factors as determined by the Secretary.

(2) To furnish hospital care, medical services, or extended care services under this section, an eligible entity or provider shall agree—

(A) to accept payment at the rates established in regulations prescribed under this section;

(B) that payment by the Secretary under this section on behalf of a covered individual to a provider of services or care shall, unless rejected and refunded by the provider within 30 days of receipt, constitute payment in full and extinguish any liability on the part of the covered individual for the treatment or care provided, and no provision of a contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate this requirement;

(C) to provide only the care and services authorized by the Department under this section and to obtain the prior written consent of the Department to furnish care or services outside the scope of such authorization;

(D) to bill the Department in accordance with the methodology outlined in regulations prescribed under this section;

(E) to not seek to recover or collect from a health plan contract or third party, as those terms are defined in section 1729 of this title, for any care or service that is furnished or paid for by the Department;

(F) to provide medical records to the Department in the time frame and format specified by the Department; and

(G) to meet such other terms and conditions, including quality of care assurance standards, as the Secretary may specify in regulation.

(f) **DISCONTINUATION OR NONRENEWAL OF A VETERANS CARE AGREEMENT.**—(1) An eligible entity or provider may discontinue a Veterans Care Agreement at such time and upon such notice to the Secretary as may be provided in regulations prescribed under this section.

(2) The Secretary may discontinue a Veterans Care Agreement with an eligible entity or provider at such time and upon such reasonable notice to the eligible entity or provider as may be specified in regulations prescribed under this section, if an official designated by the Secretary—

(A) has determined that the eligible entity or provider failed to comply substantially with the provisions of the Veterans Care Agreement, or with the provisions of this section or regulations prescribed under this section;

(B) has determined the eligible entity or provider is excluded from participation in a Federal health care program under section 1128 or section 1128A of the Social Security Act (42 U.S.C. 1320a-7 or 1320a-7a) or is identified on the System for Award Management Exclusions list as provided in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations;

(C) has ascertained that the eligible entity or provider has been convicted of a felony or other serious offense under Federal or State law and determines the eligible entity or provider's continued participation would be detrimental to the best interests of covered individuals or the Department; or

(D) has determined that it is reasonable to terminate the agreement based on the health care needs of a covered individual.

(g) **QUALITY OF CARE.**—The Secretary shall establish a system or systems for monitoring the quality of care provided to covered individuals through Veterans Care Agreements and for assessing the quality of hospital care, medical services, and extended care services furnished by eligible entities and providers before the renewal of Veterans Care Agreements.

(h) **DISPUTES.**—(1) The Secretary shall promulgate administrative procedures for eligible entities and providers to present all disputes arising under or related to Veterans Care Agreements.

(2) Such procedures constitute the eligible entities' and providers' exhaustive and exclusive administrative remedies.

(3) Eligible entities or providers must first exhaust such administrative procedures before seeking any judicial review under section 1346 of title 28 (known as the "Tucker Act").

(4) Disputes under this section must pertain to either the scope of authorization under the Veterans Care Agreement or claims for payment subject to the Veterans Care Agreement and are not claims for the purposes of such laws that would otherwise require application of sections 7101 through 7109 of title 41.

(i) **APPLICABILITY OF OTHER PROVISIONS OF LAW.**—(1) A Veterans Care Agreement may be authorized by the Secretary or any Department official authorized by the Secretary, and such action shall not be treated as—

(A) an award for the purposes of such laws that would otherwise require the use of competitive procedures for the furnishing of care and services; or

(B) a Federal contract for the acquisition of goods or services for purposes of any provision of Federal law governing Federal contracts for the acquisition of goods or services except section 4706(d) of title 41.

(2)(A) Except as provided in the agreement itself, in subparagraph (B), and unless otherwise provided in this section or regulations prescribed pursuant to this section, an eligible entity or provider that enters into an agreement under this section is not subject to, in the carrying out of the agreement, any law to which providers of services and suppliers under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) are not subject.

(B) An eligible entity or provider that enters into an agreement under this section is subject to—

(i) all laws regarding integrity, ethics, or fraud, or that subject a person to civil or criminal penalties; and

(ii) all laws that protect against employment discrimination or that otherwise ensure equal employment opportunities.

(3) Notwithstanding paragraph (2)(B)(i), an eligible entity or provider that enters into an agreement under this section shall not be treated as a Federal contractor or subcontractor for purposes of chapter 67 of title 41 (commonly known as the “McNamara-O’Hara Service Contract Act of 1965”).

(j) **PARITY OF TREATMENT.**—Eligibility for hospital care, medical services, and extended care services furnished to any covered individual pursuant to a Veterans Care Agreement shall be subject to the same terms as though provided in a facility of the Department, and provisions of this chapter applicable to covered individuals receiving such care and services in a facility of the Department shall apply to covered individuals treated under this section.

(k) **RULEMAKING.**—The Secretary shall promulgate regulations to carry out this section.

(l) **COVERED INDIVIDUAL DEFINED.**—In this section, the term “covered individual” means any individual eligible for hospital care, medical services, or extended care services under this title or any other law administered by the Secretary.

(Added Pub. L. 115–182, title I, §102(a), June 6, 2018, 132 Stat. 1404; amended Pub. L. 115–251, title II, §§ 203, 211(a)(2), Sept. 29, 2018, 132 Stat. 3172, 3174.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2) and (i)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2018—Subsec. (a)(1)(A). Pub. L. 115–251, §203(b)(1)(A), substituted “covered individual” for “veteran” whenever appearing.

Subsec. (a)(1)(C). Pub. L. 115–251, §203(b)(1)(B), substituted “covered individual” for “veteran” and “covered individual’s” for “veteran’s”.

Subsec. (e)(2)(B). Pub. L. 115–251, §203(b)(2), substituted “covered individual” for “veteran” in two places.

Subsec. (f)(2)(C). Pub. L. 115–251, §203(b)(3)(A), substituted “covered individuals” for “veterans”.

Subsec. (f)(2)(D). Pub. L. 115–251, §203(b)(3)(B), substituted “covered individual” for “veteran”.

Subsec. (g). Pub. L. 115–251, §203(b)(4), substituted “to covered individuals” for “to veterans”.

Subsec. (h)(4). Pub. L. 115–251, §211(a)(2), struck out “, United States Code” after “of title 41”.

Subsec. (j). Pub. L. 115–251, §203(b)(5), substituted “any covered individual” for “any veteran” and substituted “to covered individuals” for “to veterans” in two places.

Subsec. (l). Pub. L. 115–251, §203(a), added subsec. (l).

Statutory Notes and Related Subsidiaries

APPLICABILITY OF DIRECTIVE OF OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Pub. L. 115–182, title I, §107, June 6, 2018, 132 Stat. 1416, provided that:

“(a) **IN GENERAL.**—Notwithstanding the treatment of certain laws under subsection (i) of section 1703A of title 38, United States Code, as added by section 102 of this title, Directive 2014–01 of the Office of Federal Contract Compliance Programs of the Department of Labor (effective as of May 7, 2014) shall apply to any entity entering into an agreement under such section 1703A or section 1745 of such title, as amended by section 103, in the same manner as such directive applies to subcontractors under the TRICARE program for the duration of the moratorium provided under such directive.

“(b) **APPLICABILITY PERIOD.**—The directive described in subsection (a), and the moratorium provided under such directive, shall not be altered or rescinded before May 7, 2019.

“(c) **TRICARE PROGRAM DEFINED.**—In this section, the term ‘TRICARE program’ has the meaning given that term in section 1072 of title 10, United States Code.”

§ 1703B. Access standards

(a)(1) The Secretary shall establish access standards for furnishing hospital care, medical services, or extended care services to covered veterans for the purposes of section 1703(d).

(2) The Secretary shall ensure that the access standards established under paragraph (1) define such categories of care to cover all care and services within the medical benefits package of the Department of Veterans Affairs.

(b) The Secretary shall ensure that the access standards provide covered veterans, employees of the Department, and health care providers in the network established under section 1703(h) with relevant comparative information that is clear, useful, and timely, so that covered veterans can make informed decisions regarding their health care.

(c) The Secretary shall consult with all pertinent Federal entities (including the Department of Defense, the Department of Health and Human Services, and the Centers for Medicare & Medicaid Services), entities in the private sector, and other nongovernmental entities in establishing access standards.

(d)(1) Not later than 270 days after the date of the enactment of the Caring for Our Veterans Act of 2018, the Secretary shall submit to the appropriate committees of Congress a report detailing the access standards.

(2)(A) Before submitting the report required under paragraph (1), the Secretary shall provide periodic updates to the appropriate committees of Congress to confirm the Department’s progress towards developing the access standards required by this section.