

§ 1320a-8. Civil monetary penalties and assessments for subchapters II, VIII and XVI

(a) False statements or representations of material fact; proceedings to exclude; wrongful conversions by representative payees

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II or benefits or payments under subchapter VIII or XVI, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II or benefits or payments under subchapter VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact, except that in the case of such a person who receives a fee or other income for services performed in connection with any such determination (including a claimant representative, translator, or current or former employee of the Social Security Administration) or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, the amount of such penalty shall be not more than \$7,500. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a-7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II or subchapter VIII, or eligible for benefits or payments under subchapter XVI.

(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 405(j), 1007, or

1383(a)(2) of this title, a payment under subchapter II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

(b) Initiation of proceedings; hearing; sanctions

(1) The Commissioner of Social Security may initiate a proceeding to determine whether to impose a civil money penalty or assessment, or whether to recommend exclusion under subsection (a) only as authorized by the Attorney General pursuant to procedures agreed upon by the Commissioner of Social Security and the Attorney General. The Commissioner of Social Security may not initiate an action under this section with respect to any violation described in subsection (a) later than 6 years after the date the violation was committed. The Commissioner of Social Security may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

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

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime; and

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

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

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

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

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

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

(D) staying the proceedings;

(E) dismissal of the action;

(F) entering a default judgment;

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

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

(c) Amount or scope of penalties, assessments, or exclusions

In determining pursuant to subsection (a) the amount or scope of any penalty or assessment, or whether to recommend an exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements, representations, or actions referred to in subsection (a) and the circumstances under which they occurred;

(2) the degree of culpability, history of prior offenses, and financial condition of the person committing the offense; and

(3) such other matters as justice may require.

(d) Judicial review

(1) Any person adversely affected by a determination of the Commissioner of Social Security under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the statement or representation referred to in subsection (a) was made, by filing in such court (within 60 days following the date the person is notified of the Commissioner's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner of Social Security, and thereupon the Commissioner of Social Security shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Commissioner of Social Security and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commissioner of Social Security shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(2) The findings of the Commissioner of Social Security with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive in the review described in paragraph (1). If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commissioner of Social Security, the court may order such additional evidence to be taken before the Commissioner of Social Security and to be made a part of the record. The Commissioner of Social Security may modify such findings as to the facts, or

make new findings, by reason of additional evidence so taken and filed, and the Commissioner of Social Security shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive, and the Commissioner's recommendations, if any, for the modification or setting aside of the Commissioner's original order.

(3) Upon the filing of the record and the Commissioner's original or modified order with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(e) Compromise of money penalties and assessments; recovery; use of funds recovered

(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—

(A) in a civil action in the name of the United States brought in United States district court for the district where the violation occurred, or where the person resides, as determined by the Commissioner of Social Security;

(B) by means of reduction in tax refunds to which the person is entitled, based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31;

(C)(i) by decrease of any payment of monthly insurance benefits under subchapter II, notwithstanding section 407 of this title,

(ii) by decrease of any payment under subchapter VIII to which the person is entitled, or

(iii) by decrease of any payment under subchapter XVI for which the person is eligible, notwithstanding section 407 of this title, as made applicable to subchapter XVI by reason of section 1383(d)(1) of this title;

(D) by authorities provided under the Debt Collection Act of 1982, as amended, to the extent applicable to debts arising under this chapter;

(E) by deduction of the amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, from any sum then or later owing by the United States to the person against whom the penalty or assessment has been assessed; or

(F) by any combination of the foregoing.

(2) Amounts recovered under this section shall be recovered by the Commissioner of Social Security and shall be disposed of as follows:

(A) In the case of amounts recovered arising out of a determination relating to subchapter II, the amounts shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund.

(B) In the case of any other amounts recovered under this section, the amounts shall be

deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

(f) Finality of determination respecting penalty, assessment, or exclusion

A determination pursuant to subsection (a) by the Commissioner of Social Security to impose a penalty or assessment, or to recommend an exclusion shall be final upon the expiration of the 60-day period referred to in subsection (d). Matters that were raised or that could have been raised in a hearing before the Commissioner of Social Security or in an appeal pursuant to subsection (d) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(g) Notification of appropriate entities of finality of determination

Whenever the Commissioner's determination to impose a penalty or assessment under this section with respect to a medical provider or physician becomes final, the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a-7a(h) of this title of such final determination.

(h) Injunction

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

(i) Delegation of authority

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

(2) The Commissioner of Social Security may delegate authority granted under this section to the Inspector General.

(j) "State agency" defined

For purposes of this section, the term "State agency" shall have the same meaning as in section 1320a-7a(i)(1) of this title.

(k) Liability of principal for acts of agents

A principal is liable for penalties and assessments under subsection (a), and for an exclusion under section 1320a-7 of this title based on a recommendation under subsection (a), for the actions of the principal's agent acting within the scope of the agency.

(l) Protection of ongoing criminal investigations

As soon as the Inspector General, Social Security Administration, has reason to believe that fraud was involved in the application of an individual for monthly insurance benefits under subchapter II or for benefits under subchapter VIII or XVI, the Inspector General shall make available to the Commissioner of Social Security information identifying the individual, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that making the information so available in a particular investigation or redetermining the eligibility of the individual for such benefits would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information is derived.

(Aug. 14, 1935, ch. 531, title XI, §1129, as added and amended Pub. L. 103-296, title I, §108(b)(10)(A), title II, §206(b)(1), (e)(1), Aug. 15, 1994, 108 Stat. 1483, 1509, 1515; Pub. L. 106-169, title II, §251(b)(6), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108-203, title I, §111(a), title II, §201(a)(1), (b), (c), Mar. 2, 2004, 118 Stat. 507, 508; Pub. L. 114-74, title VIII, §813(c), Nov. 2, 2015, 129 Stat. 603.)

Editorial Notes

REFERENCES IN TEXT

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Debt Collection Act of 1982, referred to in subsec. (e)(1)(D), is Pub. L. 97-365, Oct. 25, 1982, 96 Stat. 1749. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 5514 of Title 5, Government Employees and Organization, and Tables.

PRIOR PROVISIONS

A prior section 1320a-8, act Aug. 14, 1935, ch. 531, title XI, §1129, as added Dec. 5, 1980, Pub. L. 96-499, title IX, §914(a), 94 Stat. 2621; amended Aug. 13, 1981, Pub. L. 97-35, title XXI, §2193(c)(4), 95 Stat. 827; July 18, 1984, Pub. L. 98-369, div. B, title III, §2354(a)(4), 98 Stat. 1100, related to coordinated audits, prior to repeal by Pub. L. 100-203, title IV, §4118(m)(1)(A), (2), Dec. 22, 1987, 101 Stat. 1330-157, applicable to audits conducted after Dec. 22, 1987.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114-74, §813(c), in concluding provisions, inserted “, except that in the case of such a person who receives a fee or other income for services performed in connection with any such determination (including a claimant representative, translator, or current or former employee of the Social Security Administration) or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, the amount of such penalty shall be not more than \$7,500” after “withholding disclosure of such fact”.

2004—Subsec. (a)(1). Pub. L. 108-203, §201(a)(1), substantially rewrote par. (1). Prior to amendment, par. (1) read as follows: “Any person (including an organization, agency, or other entity) who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

“(A) monthly insurance benefits under subchapter II,

“(B) benefits or payments under subchapter VIII, or
 “(C) benefits or payments under subchapter XVI,
 that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a-7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII.”

Subsec. (a)(3). Pub. L. 108-203, §111(a), added par. (3).

Subsec. (b)(3)(A). Pub. L. 108-203, §201(c)(1), struck out “charging fraud or false statements” after “Federal or State crime”.

Subsec. (c)(1). Pub. L. 108-203, §201(c)(2), substituted “, representations, or actions” for “and representations”.

Subsec. (e)(1)(A). Pub. L. 108-203, §201(c)(3), substituted “violation occurred” for “statement or representation referred to in subsection (a) of this section was made”.

Subsec. (e)(2)(B). Pub. L. 108-203, §201(b), substituted “In the case of any other amounts recovered under this section,” for “In the case of amounts recovered arising out of a determination relating to subchapter VIII or XVI of this chapter,”.

1999—Pub. L. 106-169, §251(b)(6)(A), substituted “II, VIII” for “II” in section catchline.

Subsec. (a)(1)(B), (C). Pub. L. 106-169, §251(b)(6)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 106-169, §251(b)(6)(C), inserted “or subchapter VIII,” after “subchapter II”.

Subsec. (e)(1)(C)(ii), (iii). Pub. L. 106-169, §251(b)(6)(D), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(2)(B). Pub. L. 106-169, §251(b)(6)(E), substituted “subchapter VIII or XVI” for “subchapter XVI”.

Subsec. (I). Pub. L. 106-169, §251(b)(6)(F), substituted “subchapter VIII or XVI” for “subchapter XVI”.

1994—Subsec. (a)(1). Pub. L. 103-296, §108(b)(10)(A)(i), (ii), in closing provisions substituted “Commissioner of Social Security” for “Secretary”, inserted “recommend that the Secretary” before “exclude, as provided”, and struck out before period at end “and to direct the appropriate State agency to exclude the person from participation in any State health care program permanently or for such period as the Secretary determines”.

Subsecs. (a)(2), (b)(1), (2), (c). Pub. L. 103-296, §108(b)(10)(A)(i), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (d). Pub. L. 103-296, §108(b)(10)(A)(i), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Pub. L. 103-296, §108(b)(10)(A)(i), which directed that this section be amended by substituting “Commissioner of Social Security” for “Secretary” wherever appearing, was also executed by substituting “Commissioner’s” for “Secretary’s” wherever appearing in subsec. (d), to reflect the probable intent of Congress, because Pub. L. 103-296, §108(b)(10)(A)(i), (iii)(I), substituted “Commissioner of Social Security” for “Secretary” throughout this section and in subsec. (g) substituted “Commissioner’s” for “Secretary’s”.

Subsecs. (e), (f). Pub. L. 103-296, §108(b)(10)(A)(i), which directed amendment of this section by substituting “Commissioner of Social Security” for “Secretary” each place it appears, was executed in subsecs. (e) and (f) by making the substitution wherever appearing except where appearing before “of the Treasury” in

subsec. (e)(1)(B) to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 103-296, §108(b)(10)(A)(iii), substituted “Commissioner’s” for “Secretary’s” and “the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a-7a(h) of this title of such final determination.” for “the provisions of section 1320a-7a(h) of this title shall apply.”

Subsecs. (h), (i). Pub. L. 103-296, §108(b)(10)(A)(i), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (k). Pub. L. 103-296, §108(b)(10)(A)(iv), inserted “based on a recommendation under subsection (a)” after “section 1320a-7 of this title”.

Subsec. (I). Pub. L. 103-296, §206(e)(1), added subsec. (I).

Pub. L. 103-296, §108(b)(10)(A)(i), (v), in subsec. (I) as added by Pub. L. 103-296, §206(e)(1), substituted “Social Security Administration” for “Department of Health and Human Services” and “Commissioner of Social Security” for “Secretary”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-203, title I, §111(b), Mar. 2, 2004, 118 Stat. 507, provided that: “The amendment made by this section [amending this section] shall apply with respect to violations committed after the date of the enactment of this Act [Mar. 2, 2004].”

Pub. L. 108-203, title II, §201(d), Mar. 2, 2004, 118 Stat. 508, provided that: “The amendments made by this section [amending this section and section 1320a-8a of this title] shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202 [set out as a note under section 902 of this title].” [The centralized computer file was implemented Nov. 27, 2006, see 72 F.R. 27424.]

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(10)(A) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

Pub. L. 103-296, title II, §206(e)(2), Aug. 15, 1994, 108 Stat. 1515, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.”

EFFECTIVE DATE

Section applicable to conduct occurring on or after Oct. 1, 1994, see section 206(b)(3) of Pub. L. 103-296, set out as an Effective Date of 1994 Amendment note under section 1320a-7 of this title.

STUDY ON POSSIBLE MEASURES TO IMPROVE FRAUD PREVENTION AND ADMINISTRATIVE PROCESSING

Pub. L. 106-169, title II, §210, Dec. 14, 1999, 113 Stat. 1842, required the Commissioner of Social Security to study possible measures to improve prevention of fraud and administrative processing and submit the results no later than 1 year after Dec. 14, 1999.

§ 1320a-8a. Administrative procedure for imposing penalties for false or misleading statements

(a) In general

Any person who—

(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II or benefits or payments under subchapter XVI that the person knows or should know is false or misleading,