

“(2) REPORT TO CONGRESS.—Not later than June 1, 2006, the Secretary shall submit to Congress a report on the results of the study described in paragraph (1), including any recommendations for legislation.

“(3) INCREASED COMPETITION.—If the Secretary finds based on the study conducted under paragraph (1) that other entities could improve quality in the medicare program as well as, or better than, the current quality improvement organizations, then the Secretary shall provide for such increased competition through the addition of new types of entities which may perform quality improvement functions.”

#### COORDINATION OF PROS AND CARRIERS

Pub. L. 101-508, title IV, §4205(c), Nov. 5, 1990, 104 Stat. 1388-113, provided that:

“(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

“(A) the development of common utilization and medical review criteria;

“(B) criteria for the targetting of reviews by peer review organizations and carriers; and

“(C) improved methods for exchange of information among peer review organizations and carriers.

“(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.”

#### EVALUATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Pub. L. 97-448, title III, §309(d), Jan. 12, 1983, 96 Stat. 2410, provided that: “In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 [sections 141-150 of Pub. L. 97-248] and part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] as amended by such subtitle.”

#### MAINTENANCE OF CURRENT PROFESSIONAL STANDARDS REVIEW ORGANIZATION AGREEMENTS

Pub. L. 97-248, title I, §150, Sept. 3, 1982, 96 Stat. 395, as amended by Pub. L. 97-448, title III, §309(a)(9), Jan. 12, 1983, 96 Stat. 2408, provided that:

“(a) The Secretary of Health and Human Services shall not terminate or fail to renew any agreement in effect with a professional standards review organization under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982 until such time as he enters into a contract with a utilization and quality control peer review organization under such part, as amended by this subtitle [subtitle C (§§141-150) of title I of Pub. L. 97-248], for the area served by such professional standards review organization. In complying with this subsection, the Secretary may renew any such agreement with a professional standards review organization for a period of less than 12 months.

“(b) The provisions of part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] as in effect prior to the amendments made by this subtitle [subtitle C (§§141-150) of title I of Pub. L. 97-248] shall remain in effect with respect to agreements with professional standards review organizations in effect on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982, until such time as such agreement is terminated or is not renewed, in accordance

with subsection (a). Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act [42 U.S.C. 1320c-11] after the end of such 30-day period.”

#### § 1320c-1. Definition of quality improvement organization

The term “quality improvement organization” means an entity which—

(1) is able, as determined by the Secretary, to perform its functions under this part in a manner consistent with the efficient and effective administration of this part and subchapter XVIII;

(2) has at least one individual who is a representative of health care providers on its governing body; and

(3) has at least one individual who is a representative of consumers on its governing body.

(Aug. 14, 1935, ch. 531, title XI, §1152, as added Pub. L. 97-248, title I, §143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 99-509, title IX, §9353(b)(1), Oct. 21, 1986, 100 Stat. 2046; Pub. L. 112-40, title II, §261(a)(1), (2)(A), (C), Oct. 21, 2011, 125 Stat. 423.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 1320c-1, act Aug. 14, 1935, ch. 531, title XI, §1152, as added Oct. 30, 1972, Pub. L. 92-603, title II, §249F(b), 86 Stat. 1430; amended Dec. 31, 1975, Pub. L. 94-182, title I, §§105, 108(a), 89 Stat. 1052, 1053; Oct. 25, 1977, Pub. L. 95-142, §5(a), (d)(2)(A), (B), (o)(1), 91 Stat. 1183, 1185, 1191; Dec. 5, 1980, Pub. L. 96-499, title IX, §921, 94 Stat. 2627; Aug. 13, 1981, Pub. L. 97-35, title XXI, §§2112(a)(2)(A), (B), 2113(b), (c), 95 Stat. 793, 794, related to the designation of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97-248.

##### AMENDMENTS

2011—Pub. L. 112-40, §261(a)(2)(A), (C), substituted “quality improvement” for “utilization and quality control peer review” in section catchline and introductory provisions.

Pars. (1), (2), Pub. L. 112-40, §261(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1320c-2 of this title, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

“(2) is able, in the judgment of the Secretary, to perform review functions required under section 1320c-3 of this title in a manner consistent with the efficient and effective administration of this part and to perform re-

views of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and”.

1986—Par. (3). Pub. L. 99-509 added par. (3).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112-40, set out as a note under section 1320c of this title.

##### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-509, title IX, §9353(b)(2), Oct. 21, 1986, 100 Stat. 2046, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.”

### § 1320c-2. Contracts with quality improvement organizations

#### (a) Establishment of geographic areas

The Secretary shall establish throughout the United States such local, State, regional, national, or other geographic areas as the Secretary determines appropriate with respect to which contracts under this part will be made.

#### (b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into contracts with one or more quality improvement organizations for each area established under subsection (a) if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. In entering into contracts with such qualified organizations, the Secretary shall, to the extent appropriate, seek to ensure that each of the functions described in section 1320c-3(a) of this title are carried out within an area established under subsection (a). If more than one such qualified organization will be operating in an area, the Secretary shall ensure that there is no duplication of the functions carried out by such organizations within the area.

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an “eligible orga-

nization” as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part or the Secretary determines that there is a more qualified entity to perform one or more of the functions in section 1320c-3(a) of this title, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities.

(4) The Secretary may consider a variety of factors in selecting the contractors that the Secretary determines would provide for the most efficient and effective administration of this part, such as geographic location, size, and prior experience in health care quality improvement. Quality improvement organizations operating as of January 1, 2012, shall be allowed to compete for new contracts (as determined appropriate by the Secretary) along with other qualified organizations and are eligible for renewal of contracts for terms five years thereafter (as determined appropriate by the Secretary).

#### (c) Terms of contract

Each contract with an organization under this section shall provide that—

(1) the organization shall perform a function or functions under section 1320c-3 of this title directly or may subcontract for the performance of all or some of such function or functions (and for purposes of paragraphs (2) and (3) of subsection (b), a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of five years and shall be renewable for terms of five years thereafter;

(4) the Secretary shall include in the contract negotiated objectives against which the organization’s performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(5) reimbursement shall be made to the organization on a monthly basis, with payments