

SECTION 1. *Purpose.* Every infant born alive, no matter the circumstances of his or her birth, has the same dignity and the same rights as every other individual and is entitled to the same protections under Federal law. Such laws include the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. 1395dd, which guarantees, in hospitals that have an emergency department, each individual's right to an appropriate medical screening examination and to either stabilizing treatment or an appropriate transfer. They also include section 504 of the Rehabilitation Act [of 1973] (Rehab Act), 29 U.S.C. 794, which prohibits discrimination against individuals with disabilities by programs and activities receiving Federal funding. In addition, the Born-Alive Infants Protection Act [of 2002], 1 U.S.C. 8, makes clear that all infants born alive are individuals for purposes of these and other Federal laws and are therefore afforded the same legal protections as any other person. Together, these laws help protect infants born alive from discrimination in the provision of medical treatment, including infants who require emergency medical treatment, who are premature, or who are born with disabilities. Such infants are entitled to meaningful and non-discriminatory access to medical examination and services, with the consent of a parent or guardian, when they present at hospitals receiving Federal funds.

Despite these laws, some hospitals refuse the required medical screening examination and stabilizing treatment or otherwise do not provide potentially lifesaving medical treatment to extremely premature or disabled infants, even when parents plead for such treatment. Hospitals might refuse to provide treatment to extremely premature infants—born alive before 24 weeks of gestation—because they believe these infants may not survive, may have to live with long-term disabilities, or may have a quality-of-life deemed to be inadequate. Active treatment of extremely premature infants has, however, been shown to improve their survival rates. And the denial of such treatment, or discouragement of parents from seeking such treatment for their children, devalues the lives of these children and may violate Federal law.

SEC. 2. *Policy.* It is the policy of the United States to recognize the human dignity and inherent worth of every newborn or other infant child, regardless of prematurity or disability, and to ensure for each child due protection under the law.

SEC. 3. (a) The Secretary of Health and Human Services (Secretary) shall ensure that individuals responsible for all programs and activities under his jurisdiction that receive Federal funding are aware of their obligations toward infants, including premature infants or infants with disabilities, who have an emergency medical condition in need of stabilizing treatment, under EMTALA and section 504 of the Rehab Act, as interpreted consistent with the Born-Alive Infants Protection Act. In particular, the Secretary shall ensure that individuals responsible for such programs and activities are aware that they are not excused from complying with these obligations, including the obligation to provide an appropriate medical screening examination and stabilizing treatment or transfer, when extremely premature infants are born alive or infants are born with disabilities. The Secretary shall also ensure that individuals responsible for such programs and activities are aware that they may not unlawfully discourage parents from seeking medical treatment for their infant child solely because of their infant child's disability. The Secretary shall further ensure that individuals responsible for such programs and activities are aware of their obligations to provide stabilizing treatment that will allow the infant patients to be transferred to a more suitable facility if appropriate treatment is not possible at the initial location.

(b) The Secretary shall, as appropriate and consistent with applicable law, ensure that Federal funding disbursed by the Department of Health and Human Services is expended in full compliance with EMTALA and section 504 of the Rehab Act, as interpreted consistent

with the Born-Alive Infants Protection Act, as reflected in the policy set forth in section 2 of this order.

(i) The Secretary shall, as appropriate and to the fullest extent permitted by law, investigate complaints of violations of applicable Federal laws with respect to infants born alive, including infants who have an emergency medical condition in need of stabilizing treatment or infants with disabilities whose parents seek medical treatment for their infants. The Secretary shall also clarify, in an easily understandable format, the process by which parents and hospital staff may submit such complaints for investigation under applicable Federal laws.

(ii) The Secretary shall take all appropriate enforcement action against individuals and organizations found through investigation to have violated applicable Federal laws, up to and including terminating Federal funding for non-compliant programs and activities.

(c) The Secretary shall, as appropriate and consistent with applicable law, prioritize the allocation of Department of Health and Human Services discretionary grant funding and National Institutes of Health research dollars for programs and activities conducting research to develop treatments that may improve survival—especially survival without impairment—of infants born alive, including premature infants or infants with disabilities, who have an emergency medical condition in need of stabilizing treatment.

(d) The Secretary shall, as appropriate and consistent with applicable law, prioritize the allocation of Department of Health and Human Services discretionary grant funding to programs and activities, including hospitals, that provide training to medical personnel regarding the provision of life-saving medical treatment to all infants born alive, including premature infants or infants with disabilities, who have an emergency medical condition in need of stabilizing treatment.

(e) The Secretary shall, as necessary and consistent with applicable law, issue such regulations or guidance as may be necessary to implement this order.

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 1395ee. Practicing Physicians Advisory Council; Council for Technology and Innovation

(a) Repealed. Pub. L. 111-148, title III, § 3134(b)(2), Mar. 23, 2010, 124 Stat. 435

(b) Council for Technology and Innovation

(1) Establishment

The Secretary shall establish a Council for Technology and Innovation within the Centers for Medicare & Medicaid Services (in this section referred to as “CMS”).

(2) Composition

The Council shall be composed of senior CMS staff and clinicians and shall be chaired by the Executive Coordinator for Technology and Innovation (appointed or designated under paragraph (4)).

(3) Duties

The Council shall coordinate the activities of coverage, coding, and payment processes

under this subchapter with respect to new technologies and procedures, including new drug therapies, and shall coordinate the exchange of information on new technologies between CMS and other entities that make similar decisions.

(4) Executive Coordinator for Technology and Innovation

The Secretary shall appoint (or designate) a noncareer appointee (as defined in section 3132(a)(7) of title 5) who shall serve as the Executive Coordinator for Technology and Innovation. Such executive coordinator shall report to the Administrator of CMS, shall chair the Council, shall oversee the execution of its duties, and shall serve as a single point of contact for outside groups and entities regarding the coverage, coding, and payment processes under this subchapter.

(c) Physician-focused payment models

(1) Technical Advisory Committee

(A) Establishment

There is established an ad hoc committee to be known as the “Physician-Focused Payment Model Technical Advisory Committee” (referred to in this subsection as the “Committee”).

(B) Membership

(i) Number and appointment

The Committee shall be composed of 11 members appointed by the Comptroller General of the United States.

(ii) Qualifications

The membership of the Committee shall include individuals with national recognition for their expertise in physician-focused payment models and related delivery of care. No more than 5 members of the Committee shall be providers of services or suppliers, or representatives of providers of services or suppliers.

(iii) Prohibition on Federal employment

A member of the Committee shall not be an employee of the Federal Government.

(iv) Ethics disclosure

The Comptroller General shall establish a system for public disclosure by members of the Committee of financial and other potential conflicts of interest relating to such members. Members of the Committee shall be treated as employees of Congress for purposes of applying subchapter I of chapter 131 of title 5.

(v) Date of initial appointments

The initial appointments of members of the Committee shall be made by not later than 180 days after April 16, 2015.

(C) Term; vacancies

(i) Term

The terms of members of the Committee shall be for 3 years except that the Comptroller General shall designate staggered terms for the members first appointed.

(ii) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term

for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor has taken office. A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(D) Duties

The Committee shall meet, as needed, to provide comments and recommendations to the Secretary, as described in paragraph (2)(C), on physician-focused payment models.

(E) Compensation of members

(i) In general

Except as provided in clause (ii), a member of the Committee shall serve without compensation.

(ii) Travel expenses

A member of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5 while away from the home or regular place of business of the member in the performance of the duties of the Committee.

(F) Operational and technical support

(i) In general

The Assistant Secretary for Planning and Evaluation shall provide technical and operational support for the Committee, which may be by use of a contractor. The Office of the Actuary of the Centers for Medicare & Medicaid Services shall provide to the Committee actuarial assistance as needed.

(ii) Funding

The Secretary shall provide for the transfer, from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title, such amounts as are necessary to carry out this paragraph (not to exceed \$5,000,000) for fiscal year 2015 and each subsequent fiscal year. Any amounts transferred under the preceding sentence for a fiscal year shall remain available until expended.

(G) Application

Section 1013 of title 5 shall not apply to the Committee.

(2) Criteria and process for submission and review of physician-focused payment models

(A) Criteria for assessing physician-focused payment models

(i) Rulemaking

Not later than November 1, 2016, the Secretary shall, through notice and comment rulemaking, following a request for information, establish criteria for physician-focused payment models, including models for specialist physicians, that could be used by the Committee for making comments and recommendations pursuant to paragraph (1)(D).

(ii) MedPAC submission of comments

During the comment period for the proposed rule described in clause (i), the Medicare Payment Advisory Commission may submit comments to the Secretary on the proposed criteria under such clause.

(iii) Updating

The Secretary may update the criteria established under this subparagraph through rulemaking.

(B) Stakeholder submission of physician-focused payment models

On an ongoing basis, individuals and stakeholder entities may submit to the Committee proposals for physician-focused payment models that such individuals and entities believe meet the criteria described in subparagraph (A).

(C) Committee review of models submitted

The Committee, on a periodic basis—

(i) shall review models submitted under subparagraph (B);

(ii) may provide individuals and stakeholder entities who submitted such models with—

(I) initial feedback on such models regarding the extent to which such models meet the criteria described in subparagraph (A); and

(II) an explanation of the basis for the feedback provided under subclause (I); and

(iii) shall prepare comments and recommendations regarding whether such models meet the criteria described in subparagraph (A) and submit such comments and recommendations to the Secretary.

(D) Secretary review and response

The Secretary shall review the comments and recommendations submitted by the Committee under subparagraph (C) and post a detailed response to such comments and recommendations on the Internet website of the Centers for Medicare & Medicaid Services.

(3) Rule of construction

Nothing in this subsection shall be construed to impact the development or testing of models under this subchapter or subchapters XI, XIX, or XXI.

(Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added Pub. L. 101–508, title IV, § 4112, Nov. 5, 1990, 104 Stat. 1388–64; amended Pub. L. 108–173, title IX, § 942(a), Dec. 8, 2003, 117 Stat. 2420; Pub. L. 111–148, title III, § 3134(b)(2), Mar. 23, 2010, 124 Stat. 435; Pub. L. 114–10, title I, § 101(e)(1), Apr. 16, 2015, 129 Stat. 115; Pub. L. 115–123, div. E, title X, § 51003(b), Feb. 9, 2018, 132 Stat. 295; Pub. L. 117–286, § 4(a)(255), (c)(42), Dec. 27, 2022, 136 Stat. 4334, 4359.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 1395ee, act Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 329, provided for creation of a Na-

tional Medical Review Committee, functions of such Committee, including submission of annual reports to the Secretary and Congress, employment of technical assistance, and for availability of assistance and data, prior to repeal by Pub. L. 90–248, title I, § 164(c), Jan. 2, 1968, 81 Stat. 874.

AMENDMENTS

2022—Subsec. (c)(1)(B)(iv). Pub. L. 117–286, § 4(c)(42), substituted “subchapter I of chapter 131 of title 5.” for “title I of the Ethics in Government Act of 1978 (Public Law 95–521).”

Subsec. (c)(1)(G). Pub. L. 117–286, § 4(a)(255), substituted “Section 1013 of title 5” for “Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.)”.

2018—Subsec. (c)(2)(C). Pub. L. 115–123 amended subpar. (C) generally. Prior to amendment, text read as follows: “The Committee shall, on a periodic basis, review models submitted under subparagraph (B), prepare comments and recommendations regarding whether such models meet the criteria described in subparagraph (A), and submit such comments and recommendations to the Secretary.”

2015—Subsec. (c). Pub. L. 114–10 added subsec. (c).

2010—Subsec. (a). Pub. L. 111–148 struck out subsec. (a) which related to the Practicing Physicians Advisory Council.

2003—Pub. L. 108–173, § 942(a)(1), inserted “; Council for Technology and Innovation” in section catchline.

Subsec. (a). Pub. L. 108–173, § 942(a)(2)–(4), inserted subsec. heading, redesignated existing provisions as par. (1), substituted “in this subsection” for “in this section”, and redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively.

Subsec. (b). Pub. L. 108–173, § 942(a)(5), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsec. (c). Pub. L. 108–173, § 942(a)(4), redesignated subsec. (c) as par. (3) of subsec. (a).

Statutory Notes and Related Subsidiaries**TERMINATION OF ADVISORY COUNCILS**

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

§ 1395ff. Determinations; appeals**(a) Initial determinations****(1) Promulgations of regulations**

The Secretary shall promulgate regulations and make initial determinations with respect to benefits under part A or part B in accordance with those regulations for the following:

(A) The initial determination of whether an individual is entitled to benefits under such parts.

(B) The initial determination of the amount of benefits available to the individual under such parts.

(C) Any other initial determination with respect to a claim for benefits under such parts, including an initial determination by the Secretary that payment may not be made, or may no longer be made, for an item or service under such parts, an initial determination made by a quality improvement organization under section 1320c–3(a)(2) of