

later than the date that is 6 months after the date on which the plan is received by the Comptroller General, shall submit to Congress a report on such evaluation.

“(b) TRANSFER OF ADJUDICATION AUTHORITY.—

“(1) IN GENERAL.—Not earlier than July 1, 2005, and not later than October 1, 2005, the Commissioner of Social Security and the Secretary shall implement the transition plan under subsection (a) and transfer the administrative law judge functions described in such subsection from the Social Security Administration to the Secretary.

“(2) ASSURING INDEPENDENCE OF JUDGES.—The Secretary shall assure the independence of administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Centers for Medicare & Medicaid Services and its contractors. In order to assure such independence, the Secretary shall place such judges in an administrative office that is organizationally and functionally separate from such Centers. Such judges shall report to, and be under the general supervision of, the Secretary, but shall not report to, or be subject to supervision by, another officer of the Department of Health and Human Services.

“(3) GEOGRAPHIC DISTRIBUTION.—The Secretary shall provide for an appropriate geographic distribution of administrative law judges performing the administrative law judge functions transferred under paragraph (1) throughout the United States to ensure timely access to such judges.

“(4) HIRING AUTHORITY.—Subject to the amounts provided in advance in appropriations Acts, the Secretary shall have authority to hire administrative law judges to hear such cases, taking into consideration those judges with expertise in handling medicare appeals and in a manner consistent with paragraph (3), and to hire support staff for such judges.

“(5) FINANCING.—Amounts payable under law to the Commissioner for administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall become payable to the Secretary for the functions so transferred.

“(6) SHARED RESOURCES.—The Secretary shall enter into such arrangements with the Commissioner as may be appropriate with respect to transferred functions of administrative law judges to share office space, support staff, and other resources, with appropriate reimbursement from the Trust Funds described in paragraph (5).

“(c) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to ensure timely action on appeals before administrative law judges and the Departmental Appeals Board consistent with section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund, established under section 1817 of the Social Security Act (42 U.S.C. 1395i), and the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of such Act (42 U.S.C. 1395t)) to the Secretary such sums as are necessary for fiscal year 2005 and each subsequent fiscal year to—

“(1) increase the number of administrative law judges (and their staffs) under subsection (b)(4);

“(2) improve education and training opportunities for administrative law judges (and their staffs); and

“(3) increase the staff of the Departmental Appeals Board.”

TRANSITION

Pub. L. 108-173, title IX, §933(d)(5), Dec. 8, 2003, 117 Stat. 2406, provided that: “In applying section 1869(g) of the Social Security Act [42 U.S.C. 1395ff(g)] (as added by paragraph (2)), any reference to a medicare administrative contractor shall be deemed to include a reference to a fiscal intermediary under section 1816 of the Social

Security Act (42 U.S.C. 1395h) and a carrier under section 1842 of such Act (42 U.S.C. 1395u).”

PROCESS FOR CORRECTION OF MINOR ERRORS AND OMISSIONS WITHOUT PURSUING APPEALS PROCESS

Pub. L. 108-173, title IX, §937, Dec. 8, 2003, 117 Stat. 2412, provided that:

“(a) CLAIMS.—The Secretary [of Health and Human Services] shall develop, in consultation with appropriate medicare contractors (as defined in section 1889(g) of the Social Security Act [42 U.S.C. 1395zz(g)], as inserted by section 301(a)(1) [probably should be 921(f)(1)] and representatives of providers of services and suppliers, a process whereby, in the case of minor errors or omissions (as defined by the Secretary) that are detected in the submission of claims under the programs under title XVIII of such Act [42 U.S.C. 1395 et seq.], a provider of services or supplier is given an opportunity to correct such an error or omission without the need to initiate an appeal. Such process shall include the ability to resubmit corrected claims.

“(b) DEADLINE.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall first develop the process under subsection (a).”

STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS’ SERVICES

Pub. L. 101-508, title IV, §4113, Nov. 5, 1990, 104 Stat. 1388-64, directed Secretary of Health and Human Services to carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under subsec. (b)(2) of this section, and to report on the results of such study and any recommendations to Congress by Dec. 31, 1992.

MEDICARE HEARINGS AND APPEALS

Pub. L. 100-203, title IV, §4037, Dec. 22, 1987, 101 Stat. 1330-80, provided that:

“(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act [42 U.S.C. 1395ff(b)(1)] prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act [42 U.S.C. 405(b)(1)].

“(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

“(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act [42 U.S.C. 1395ff(b)(1)] by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act [Dec. 22, 1987].

“(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).”

§ 1395gg. Overpayment on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals

(a) Payments to providers of services or other person regarded as payment to individuals

Any payment under this subchapter to any provider of services or other person with respect

to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Incorrect payments on behalf of individuals; payment adjustment

Where—

(1) more than the correct amount is paid under this subchapter to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section 1395f(e) of this title to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under subchapter II of this chapter.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1395i(g) of this title, and section 1395t(f) of this title, shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the Secretary's determination that more than such correct amount was paid was made subsequent to the fifth year following the year in which notice was sent to such individual that such amount had been paid; except that the Secretary may reduce such five-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(c) Exception to subsection (b) payment adjustment

There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1395f(e) of this title) with respect to an individual who is without fault or where the adjustment (or recovery)

would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4), if such adjustment (or recovery) would defeat the purposes of subchapter II or subchapter XVIII or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this subchapter) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this subchapter by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title and (B) if the Secretary's determination that such payment was incorrect was made subsequent to the fifth year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such five-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(d) Liability of certifying or disbursing officer for failure to recoup

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) or where adjustment under subsection (b) is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) Settlement of claims for benefits under this subchapter on behalf of deceased individuals

If an individual, who received services for which payment may be made to such individual under this subchapter, dies, and payment for such services was made (other than under this subchapter), and the individual died before any payment due him under this subchapter with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this sub-

chapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) Settlement of claims for section 1395k benefits on behalf of deceased individuals

If an individual who received medical and other health services for which payment may be made under section 1395k(a)(1) of this title dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to

the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.

(g) Refund of premiums for deceased individuals

If an individual, who is enrolled under section 1395i-2(c) of this title or under section 1395p of this title, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e).

(h) Appeals by providers of services or suppliers

Notwithstanding subsection (f) or any other provision of law, the Secretary shall permit a provider of services or supplier to appeal any determination of the Secretary under this subchapter relating to services rendered under this subchapter to an individual who subsequently dies if there is no other party available to appeal such determination.

(Aug. 14, 1935, ch. 531, title XVIII, § 1870, as added Pub. L. 89-97, title I, § 102(a), July 30, 1965, 79 Stat. 331; amended Pub. L. 90-248, title I, § 154(b), (c), Jan. 2, 1968, 81 Stat. 862; Pub. L. 92-603, title II, §§ 261(a), 266, 281(a), (b), Oct. 30, 1972, 86 Stat. 1448, 1450, 1454, 1455; Pub. L. 93-445, title III, § 309, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 96-499, title IX, § 954(a), Dec. 5, 1980, 94 Stat. 2647; Pub. L. 97-248, title I, § 128(d)(1), Sept. 3, 1982, 96 Stat. 367; Pub. L. 100-203, title IV, §§ 4039(h)(7), 4096(a)(2), Dec. 22, 1987, 101 Stat. 1330-139, as amended Pub. L. 100-360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776; Pub. L. 100-360, title IV, § 411(j)(4)(B), July 1, 1988, 102 Stat. 791; Pub. L. 108-173, title IX, § 939(a), Dec. 8, 2003, 117 Stat. 2416; Pub. L. 112-240, title VI, § 638(a), Jan. 2, 2013, 126 Stat. 2357.)

Editorial Notes

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2013—Subsecs. (b), (c). Pub. L. 112-240 substituted “fifth year” for “third year” and “five-year” for “three-year” in last sentence.

2003—Subsec. (h). Pub. L. 108-173 added subsec. (h).
 1988—Pub. L. 100-360, § 411(e)(3), added Pub. L. 100-203, § 4039(h)(7), see 1987 Amendment note below.

Subsec. (f)(1), (2). Pub. L. 100-360, § 411(j)(4)(B), substituted “of assignment specified in” for “specified in subclauses (I) and (II) of”.

1987—Pub. L. 100-203, § 4039(h)(7), as added by Pub. L. 100-360, § 411(e)(3), amended section catchline generally.

Subsec. (f)(1), (2). Pub. L. 100-203, § 4096(a)(2), substituted “to the terms specified in subclauses (I) and (II) of section 1395u(b)(3)(B)(ii) of this title with respect to the services” for “that the reasonable charge is the full charge for the services”.

1982—Subsec. (c). Pub. L. 97-248 substituted “section 1395y(a)” for “section 1395y”.

1980—Subsec. (f). Pub. L. 96-499 amended subsec. (f) generally, inserting provision for payments to providers of medical and other health services where the person or persons furnishing the services did not agree that the reasonable charge was the full charge for such services.

1974—Subsec. (b). Pub. L. 93-445 substituted “Railroad Retirement Act of 1974” for “Railroad Retirement Act of 1937”, wherever appearing.

1972—Subsec. (b). Pub. L. 92-603, § 281(a), required that provider of services or other person be without fault with respect to payment of excess over correct amount as prerequisite to adjustment or recovery of incorrect payments.

Subsec. (c). Pub. L. 92-603, §§ 261(a), 281(b), substituted “or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4), if” for “and where”, inserted reference to subchapter XVIII of this chapter, and inserted provisions covering the adjustment or recovery of incorrect payments against individuals who are without fault.

Subsec. (g). Pub. L. 92-603, § 266, added subsec. (g).
 1968—Pub. L. 90-248, § 154(b), provided for settlement of claims for benefits on behalf of deceased individuals in section catchline.

Subsecs. (e), (f). Pub. L. 90-248, § 154(c), added subsecs. (e) and (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title VI, § 638(b), Jan. 2, 2013, 126 Stat. 2357, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 2, 2013].”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-173, title IX, § 939(b), Dec. 8, 2003, 117 Stat. 2416, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003] and shall apply to items and services furnished on or after such date.”

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

Amendment by section 4096(a)(2) of Pub. L. 100-203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100-203, set out as a note under section 1320c-3 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97-248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-499, title IX, § 954(b), Dec. 5, 1980, 94 Stat. 2647, provided that: “The amendment made by this section [amending this section] shall apply only to claims filed on or after January 1, 1981.”

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-445 effective Jan. 1, 1975, see section 603 of Pub. L. 93-445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-603, title II, § 261(b), Oct. 30, 1972, 86 Stat. 1448, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to waiver actions considered after the date of the enactment of this Act [Oct. 30, 1972].”

Pub. L. 92-603, title II, § 281(g), Oct. 30, 1972, 86 Stat. 1456, provided that: “The provisions of subsection (a)(1) [amending this section] shall apply with respect to notices of payment sent to individuals after the date of enactment of this Act [Oct. 30, 1972]. The provisions of subsections (a)(2), (b), (c), and (d) [amending this section and sections 1395u and 1395cc of this title] shall apply in the case of notices sent to individuals after 1968. The provisions of subsections (e) and (f) [amending sections 1395f and 1395n of this title] shall apply in the case of services furnished (or deemed to have been furnished) after 1970.”

WAIVER OF LIABILITY LIMITING RECOUPMENT IN CERTAIN CASES

Pub. L. 101-239, title VI, § 6109, Dec. 19, 1989, 103 Stat. 2213, provided that: “In the case where more than the correct amount may have been paid to a physician or individual under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] with respect to services furnished during the period beginning on July 1, 1985, and ending on March 31, 1986, as a result of a carrier’s establishing statewide fees for certain procedure codes while the carrier was in the process of implementing the national common procedure coding system of the Health Care Financing Administration, the provisions of section 1870(c) of the Social Security Act [42 U.S.C. 1395gg(c)] shall apply, without the need for affirmative action by such a physician or individual, so as to prevent any recoupment, or other decrease in subsequent payments, to the physician or individual. The previous sentence shall apply to claims for items and services which were reopened by carriers on or after July 31, 1987.”

§ 1395hh. Regulations

(a) Authority to prescribe regulations; ineffectiveness of substantive rules not promulgated by regulation

(1) The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this subchapter. When used in this subchapter, the term “regulations” means, unless the context otherwise requires, regulations prescribed by the Secretary.

(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this subchapter shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).

(3)(A) The Secretary, in consultation with the Director of the Office of Management and Budg-