''(1) the amendments made by section 602(h)(2)(A) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after April 20, 1983; and

''(2) the amendments made by section 602(h)(2)(B) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984].''

### § 1395pp. Limitation on liability where claims are disallowed

#### (a) Conditions prerequisite to payment for items and services notwithstanding determination of disallowance

Where—

(1) a determination is made that, by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g), payment may not be made under part A or part B of this subchapter for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title, and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under such part A or part B,

then to the extent permitted by this subchapter, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this subchapter), as though section 1395y(a)(1) and section 1395y(a)(9) of this title did not apply and as though the coverage denial described in subsection (g) had not occurred. In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a quality improvement organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.

#### (b) Knowledge of person or provider that payment could not be made; indemnification of individual

In any case in which the provisions of paragraphs (1) and (2) of subsection (a) are met, except that such provider or such other person, as the case may be, knew, or could be expected to know, that payment for such services or items could not be made under such part A or part B, then the Secretary shall, upon proper application filed within such time as may be prescribed in regulations, indemnify the individual (referred to in such paragraphs) for any payments received from such individual by such provider or such other person, as the case may be, for such items or services. Any payments made by the Secretary as indemnification shall be deemed to have been made to such provider or such other person, as the case may be, and shall be treated as overpayments, recoverable from such provider or such other person, as the case may be, under applicable provisions of law. In each such case the Secretary shall notify such individual of the conditions under which indemnification is made and in the case of comparable situations arising thereafter with respect to such individual, he shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services. No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.

#### (c) Knowledge of both provider and individual to whom items or services were furnished that payment could not be made

No payments shall be made under this subchapter in any cases in which the provisions of paragraph (1) of subsection (a) are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B by reason of section 1395y(a)(1) or (a)(9) of this title or by reason of a coverage denial described in subsection (g).

#### (d) Exercise of rights

In any case arising under subsection (b) (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c), the provider or other person shall have the same rights that an individual has under sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable) when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

#### (e) Payment where beneficiary not at fault

Where payment for inpatient hospital services or extended care services may not be made

under part A of this subchapter on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1395x(e) or (j) of this title by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, quality improvement organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.

**(f) Presumption with respect to coverage denial; rebuttal; requirements; "fiscal intermediary" defined**

(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2).

(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

(A) Notice by the fiscal intermediary of the fact that payment may not be made under this subchapter with respect to the services.

(B) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

(3) The requirements of this paragraph are as follows:

(A) The agency complies with requirements of the Secretary under this subchapter respecting timely submittal of bills for payment and medical documentation.

(B) The agency program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this subchapter.

(4)(A) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed.

(B) For purposes of determining the rate of denial of bills for a home health agency under subparagraph (A), a bill shall not be considered to be denied until the expiration of the 60-day period that begins on the date such bill is denied by the fiscal intermediary, or, with respect to such a denial for which the agency requests reconsideration, until the fiscal intermediary issues a decision denying payment for such bill.

(5) In this subsection, the term ''fiscal intermediary'' means, with respect to a home health agency, an agency or organization with an agreement under section 1395h of this title with respect to the agency.

(6) The Secretary shall monitor the proportion of denied bills submitted by home health agencies for which reconsideration is requested, and shall notify Congress if the proportion of denials reversed upon reconsideration increases significantly.

**(g) Coverage denial defined**

The coverage denial described in this subsection is—

(1) with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1395f(a)(2)(C) of this title or section 1395n(a)(2)(A) of this title in that the individual—

(A) is or was not confined to his home, or

(B) does or did not need skilled nursing care on an intermittent basis; and

(2) with respect to the provision of hospice care to an individual, a determination that the individual is not terminally ill.

**(h) Supplier responsibility for items furnished on assignment basis**

If a supplier of medical equipment and supplies (as defined in section 1395m(j)(5) of this title)—

(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(j)(1) of this title;

(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1395m(a)(15) of this title; or

(3) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(a)(17)(B) of this title,

any expenses incurred for items and services furnished to an individual by such a supplier on an assignment-related basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of section 1395m(a)(18) of this title shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such section.

**(i) Hospice program eligibility recertification**

The provisions of this section shall apply with respect to a denial of a payment under this subchapter by reason of section 1395f(a)(7)(E) of this title in the same manner as such provisions apply with respect to a denial of a payment under this subchapter by reason of section 1395y(a)(1) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1879, as added Pub. L. 92–603, title II, §213(a), Oct. 30, 1972, 86 Stat. 1384; amended Pub. L. 96–499, title IX, §956(a), Dec. 5, 1980, 94 Stat. 2648; Pub. L. 97–248, title I, §§145, 148(e), Sept. 3, 1982, 96 Stat. 393, 394; Pub. L. 99–509, title IX, §§9305(g)(1), 9341(a)(3), Oct. 21, 1986, 100 Stat. 1991, 2038; Pub. L. 100–203, title IV, §4096(b), Dec. 22, 1987, 101 Stat. 1330–139; Pub. L. 101–239, title VI, §6214(a), (b), Dec. 19, 1989, 103 Stat. 2252; Pub. L. 103–432, title I, §133(b), Oct. 31, 1994, 108 Stat. 4421; Pub. L. 105–33, title IV, §4447, Aug. 5, 1997, 111 Stat. 424; Pub. L. 112–40, title II, §261(a)(3)(A), (B), Oct. 21,

2011, 125 Stat. 423; Pub. L. 113–185, § 3(b), Oct. 6, 2014, 128 Stat. 1969.)

**Editorial Notes**

AMENDMENTS

2014—Subsec. (i). Pub. L. 113–185 added subsec. (i).

2011—Subsec. (a). Pub. L. 112–40, § 261(a)(3)(A), substituted ''quality improvement'' for ''utilization and quality control peer review'' in concluding provisions.

Subsec. (e). Pub. L. 112–40, § 261(a)(3)(B), substituted ''quality improvement'' for ''quality control and peer review''.

1997—Subsec. (g). Pub. L. 105–33 substituted ''subsection is—'' for ''subsection is,'', redesignated remaining text as par. (1) and former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, substituted ''; and'' for period at end, and added par. (2).

1994—Subsec. (h). Pub. L. 103–432 added subsec. (h).

1989—Subsec. (f)(1). Pub. L. 101–239, § 6214(a)(1), struck out ''with respect to any coverage denial described in subsection (g) of this section'' before period at end.

Subsec. (f)(4). Pub. L. 101–239, § 6214(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(6). Pub. L. 101–239, § 6214(b), added par. (6).

1987—Subsec. (b). Pub. L. 100–203 struck out '', subject to the deductible and coinsurance provisions of this subchapter,'' after ''(referred to in such paragraphs)'' and inserted at end ''No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.''

1986—Subsec. (a). Pub. L. 99–509, § 9305(g)(1)(A)–(C), inserted in par. (1) ''or by reason of a coverage denial described in subsection (g)'', and in concluding provisions inserted ''and as though the coverage denial described in subsection (g) had not occurred'' and ''or by reason of a coverage denial described in subsection (g)''.

Subsec. (c). Pub. L. 99–509, § 9305(g)(1)(D), inserted ''or by reason of a coverage denial described in subsection (g)''.

Subsec. (d). Pub. L. 99–509, § 9341(a)(3), substituted ''sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable)'' for ''section 1395ff(b) of this title (when the determination is under part A) or section 1395u(b)(3)(C) of this title (when the determination is under part B)''.

Subsecs. (f), (g). Pub. L. 99–509, § 9305(g)(1)(E), added subsecs. (f) and (g).

1982—Subsec. (a). Pub. L. 97–248, § 145, inserted provisions relating to imputing knowledge to provider or other person furnishing items or services for which payment may not be made that payment may not be made if the provider or other person has been notified that a pattern of inappropriate utilization has occurred in the past and there has been a reasonable time for correction of such utilization.

Subsec. (e). Pub. L. 97–248, § 148(e), substituted ''quality control and peer review organization'' for ''professional standards review organization''.

1980—Subsec. (e). Pub. L. 96–499 added subsec. (e).

**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 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VI, § 6214(c), Dec. 19, 1989, 103 Stat. 2252, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations for quarters beginning on or after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by 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 1986 AMENDMENT

Pub. L. 99–509, title IX, § 9305(g)(3), Oct. 21, 1986, 100 Stat. 1993, as amended by Pub. L. 100–360, title IV, § 426(c), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, § 4207(b)(3), formerly § 4027(b)(3), Nov. 5, 1990, 104 Stat. 1388–118, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to coverage denials occurring on or after July 1, 1987, and before December 31, 1995.''

Amendment by section 9341(a)(3) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–499, title IX, § 956(b), Dec. 5, 1980, 94 Stat. 2648, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE

Pub. L. 92–603, title II, § 213(b), Oct. 30, 1972, 86 Stat. 1386, provided that: ''The amendments made by this section [enacting this section] shall be effective with respect to claims under part A or part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.], filed with respect to items or services furnished after the date of the enactment of this Act [Oct. 30, 1972].''

PROVISIONS RELATING TO ADVANCE BENEFICIARY NOTICES; REPORT ON PRIOR DETERMINATION PROCESS

Pub. L. 108–173, title IX, § 938(c), Dec. 8, 2003, 117 Stat. 2415, provided that:

''(1) DATA COLLECTION.—The Secretary [of Health and Human Services] shall establish a process for the collection of information on the instances in which an advance beneficiary notice (as defined in paragraph (5)) has been provided and on instances in which a beneficiary indicates on such a notice that the beneficiary does not intend to seek to have the item or service that is the subject of the notice furnished.

''(2) OUTREACH AND EDUCATION.—The Secretary shall establish a program of outreach and education for beneficiaries and providers of services and other persons on the appropriate use of advance beneficiary notices and coverage policies under the medicare program.

''(3) GAO REPORT ON USE OF ADVANCE BENEFICIARY NOTICES.—Not later than 18 months after the date on which section 1869(h) of the Social Security Act [42 U.S.C. 1395ff(h)] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall

submit to Congress a report on the use of advance beneficiary notices under title XVIII of such Act [42 U.S.C. 1395 et seq.]. Such report shall include information concerning the providers of services and other persons that have provided such notices and the response of beneficiaries to such notices.

''(4) GAO REPORT ON USE OF PRIOR DETERMINATION PROCESS.—Not later than 36 months after the date on which section 1869(h) of the Social Security Act [42 U.S.C. 1395ff(h)] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of the prior determination process under such section. Such report shall include—

''(A) information concerning—

''(i) the number and types of procedures for which a prior determination has been sought;

''(ii) determinations made under the process;

''(iii) the percentage of beneficiaries prevailing;

''(iv) in those cases in which the beneficiaries do not prevail, the reasons why such beneficiaries did not prevail; and

''(v) changes in receipt of services resulting from the application of such process;

''(B) an evaluation of whether the process was useful for physicians (and other suppliers) and beneficiaries, whether it was timely, and whether the amount of information required was burdensome to physicians and beneficiaries; and

''(C) recommendations for improvements or continuation of such process.

''(5) ADVANCE BENEFICIARY NOTICE DEFINED.—In this subsection, the term 'advance beneficiary notice' means a written notice provided under section 1879(a) of the Social Security Act (42 U.S.C. 1395pp(a)) to an individual entitled to benefits under part A or enrolled under part B of title XVIII of such Act [42 U.S.C. 1395c et seq., 1395j et seq.] before items or services are furnished under such part in cases where a provider of services or other person that would furnish the item or service believes that payment will not be made for some or all of such items or services under such title [42 U.S.C. 1395 et seq.].''

REPORTS TO CONGRESS ON DENIALS OF BILLS FOR PAYMENT

Pub. L. 99–509, title IX, §9305(g)(2), Oct. 21, 1986, 100 Stat. 1992, directed Secretary of Health and Human Services to report to Congress annually in March of 1987 and 1988 information on frequency and distribution (by type of provider) of denials of bills for payment under this subchapter for extended care services, home health services, and hospice care, by reason of section 1395y(a)(1) or (9) of this title, and coverage denials described in subsec. (g) of this section, and such other information as appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials.

## § 1395qq. Indian Health Service facilities

### (a) Eligibility for payments; conditions and requirements

A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for payments under this subchapter, notwithstanding sections 1395f(c) and 1395n(d) of this title, if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this subchapter.

### (b) Eligibility based on submission of plan to achieve compliance with conditions and requirements; twelve-month period

Notwithstanding subsection (a), a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this subchapter which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

### (c) Payments into special fund for improvements to achieve compliance with conditions and requirements; certification of compliance by Secretary

Notwithstanding any other provision of this subchapter, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this subchapter. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

### (d) Report by Secretary; status of facilities in complying with conditions and requirements

The annual report of the Secretary which is required by section 1671 of title 25 shall include (along with the matters specified in section 1643 of title 25) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this subchapter and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) and otherwise) toward the achievement of such compliance.

### (e) Services provided by Indian Health Service, Indian tribe, or tribal organization

(1)(A) Notwithstanding section 1395n(d) of this title, subject to subparagraph (B), the Secretary shall make payment under part B to a hospital or an ambulatory care clinic (whether provider-based or freestanding) that is operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined for purposes of subsection (a)) for services described in paragraph (2) (and for items and services furnished on or after January 1, 2005, all items and services for which payment may be made under part B) furnished in or at the direction of the hospital or clinic under the same situations, terms,