

**Editorial Notes**

## AMENDMENTS

1982—Subsec. (d). Pub. L. 97-248 redesignated second subsec. (c), relating to hearing to review determination, as subsec. (d).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective as if originally included as part of this section as this section was enacted by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, see section 128(e)(2) of Pub. L. 97-248, set out as a note under section 1395x of this title.

## EFFECTIVE DATE

Pub. L. 97-35, title XXI, §2101(c), Aug. 13, 1981, 95 Stat. 787, provided that: "The amendment made by subsection (a) [enacting this section and amending section 1396b of this title] shall apply only to services furnished by a hospital during any accounting year beginning on or after October 1, 1981."

## PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

Pub. L. 98-369, div. B, title III, §2353, July 18, 1984, 98 Stat. 1099, directed Secretary of Health and Human Services to carry out a study and report to Congress prior to Mar. 31, 1985, on modifications required in this section in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1395ww(d) of this title, so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof), such report to include recommendations as to how, and whether, implementation of this section as modified may result in reductions in total hospital inpatient costs and total expenditures under this subchapter, and prohibited from implementing this section prior to Mar. 31, 1985.

## ESTABLISHMENT AND EVALUATION OF TRANSITIONAL ALLOWANCES; REPORT AND RECOMMENDATIONS TO CONGRESS

Pub. L. 97-35, title XXI, §2101(b), Aug. 13, 1981, 95 Stat. 786, prohibited Secretary of Health and Human Services from establishing under this section transitional allowances with respect to more than 50 hospitals prior to Jan. 1, 1984, and directed Secretary to evaluate effectiveness of program of transitional allowances established under this section and, not later than Jan. 1, 1983, report to Congress on such evaluation and include in such report such recommendations for such legislative changes as deemed appropriate.

**§ 1395vv. Withholding payments from certain medicaid providers****(a) Adjustments by Secretary**

The Secretary may adjust, in accordance with this section, payments under parts A and B to any institution which has in effect an agreement with the Secretary under section 1395cc of this title, and any person who has accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(i) of this title, where such institution or person—

(1) has (or previously had) in effect an agreement with a State agency to furnish medical care and services under a State plan approved under subchapter XIX, and

(2) from which (or from whom) such State agency (A) has been unable to recover overpayments made under the State plan, or (B)

has been unable to collect the information necessary to enable it to determine the amount (if any) of the overpayments made to such institution or person under the State plan.

**(b) Implementing regulations; notice, opportunity to be heard, etc.**

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall—

(1) assure that the authority under this section is exercised only on behalf of a State agency which demonstrates to the Secretary's satisfaction that it has provided adequate notice of a determination or of a need for information, and an opportunity to appeal such determination or to provide such information,

(2) determine the amount of the payment to which the institution or person would otherwise be entitled under this subchapter which shall be treated as a setoff against overpayments under subchapter XIX, and

(3) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XIX and to which the institution or person would otherwise be entitled under this subchapter.

**(c) Payment to States of amounts recovered**

Notwithstanding any other provision of this chapter, from the trust funds established under sections 1395i and 1395t of this title, as appropriate, the Secretary shall pay to the appropriate State agency amounts recovered under this section to offset the State agency's overpayment under subchapter XIX. Such payments shall be accounted for by the State agency as recoveries of overpayments under the State plan.

(Aug. 14, 1935, ch. 531, title XVIII, §1885, as added Pub. L. 97-35, title XXI, §2104, Aug. 13, 1981, 95 Stat. 788.)

**§ 1395ww. Payments to hospitals for inpatient hospital services****(a) Determination of costs for inpatient hospital services; limitations; exemptions; "operating costs of inpatient hospital services" defined**

(1)(A)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to operating costs of inpatient hospital services (as defined in paragraph (4)) shall not recognize as reasonable (in the efficient delivery of health services) costs for the provision of such services by a hospital for a cost reporting period to the extent such costs exceed the applicable percentage (as determined under clause (ii)) of the average of such costs for all hospitals in the same grouping as such hospital for comparable time periods.

(ii) For purposes of clause (i), the applicable percentage for hospital cost reporting periods beginning—

(I) on or after October 1, 1982, and before October 1, 1983, is 120 percent;

(II) on or after October 1, 1983, and before October 1, 1984, is 115 percent; and

(III) on or after October 1, 1984, is 110 percent.

(B)(i) For purposes of subparagraph (A) the Secretary shall establish case mix indexes for